

Chapter 376
Life, Health and Accident Insurance
Section 376.900 – 376.950

August 28, 2009

Definitions.

376.900. For the purpose of sections 376.900 to 376.950 the following words and terms mean:

(1) "Care for a term of years", an agreement between a resident and a provider whereby the resident pays a fee for the right to occupy space in a designated facility, and to receive continuing care, for at least one year, but for less than the life of the resident. "Care for a term of years" also refers to a contract or agreement for continuing care for an indefinite term;

(2) "Continuing care" or "care", furnishing shelter, food, and nursing care, whether the nursing care is provided in the facility or in another setting designated by the agreement for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care. Other personal services provided shall be designated in the continuing care agreement. "Continuing care" shall include only life care, care for life, or care for a term of years;

(3) "Department", the Missouri department of insurance, financial institutions and professional registration;

(4) "Entrance fee", an initial or deferred payment of a sum of money or property which assures the resident a place in a facility for a term of years or for life. An accommodation fee, endowment fee, admission fee, or other fee of similar form and application shall be considered to be an entrance fee;

(5) "Facility", a place in which it is undertaken to provide continuing care to an individual for a term of years or for life;

(6) "Life care" or "care for life", a life lease, life membership, life estate, or similar agreement between a resident and a provider by which the resident pays a fee for the right to occupy a space in a designated facility and to receive continuing care for life;

(7) "Provider", the owner or operator, whether a natural person, partnership, or other unincorporated association, however organized, or trust or corporation, of an institution, building, residence, or other place, whether operated for profit or not, which owner or operator undertakes to provide continuing care for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments; however, the term "provider" shall not include facilities operated, owned, or leased for operation by any fraternal or religious organization if the organization as a matter of policy limits residents to those who are members or spouses of members of the organization;

(8) "Resident" means a person who enters into a life care contract with a provider or who is designated in a life care contract to be a person provided with services, board, and lodging.

(L. 1981 S.B. 84 § 1)

Administration by department, powers, duties--fees.

376.905. The administration of sections 376.900 to 376.950 is vested in the division, which shall:

(1) Prepare and furnish all forms necessary under the provisions of sections 376.900 to 376.950 in relation to applications for certificates of authority or renewals thereof, statements, examinations, and other required reports;

(2) Collect in advance, and the applicant so served shall pay to it in advance, the following fees:

(a) At the time of filing an application for a certificate of authority, an application fee in the amount of seventy-five dollars for each facility;

(b) At the time of renewal of a certificate of authority, a renewal fee in the amount of seventy-five dollars for each year or part thereof for each facility where continuing care is provided;

(c) A late fee in an amount equal to fifty percent of the renewal fee in effect on the last preceding regular renewal date;

(3) Adopt rules, within the standards of sections 376.900 to 376.950, necessary to effect the purposes of sections 376.900 to 376.950.

(L. 1981 S.B. 84 § 2)

Certificate of authority required.

376.910. No provider shall engage in the business of providing continuing care in this state without a certificate of authority therefor obtained from the department as provided in sections 376.900 to 376.950.

Application for certificate, content--renewal, content, filed when--extensions, fee.

376.915. 1. A provider shall file an application for a certificate of authority on a form prescribed by the department, and the application shall be accompanied by the annual statement and other matters as provided in this section. Thereafter, within ninety days of the end of its fiscal year, such provider shall file an annual statement along with an application for renewal of its certificate of authority unless such time shall be extended with the written consent of the department. If the department does not receive the required information within ninety days of the end of the provider's fiscal year, or within an approved time extension, a late fee shall be charged in an amount equal to fifty percent of the renewal fee in effect on the last preceding regular renewal date.

2. The annual statement shall be accompanied by a narrative describing any material differences between the pro forma income statements filed in response to section 376.920 as a part of the most immediately preceding application for a certificate of authority or annual statement and the actual results of operations during the fiscal year together with the revised pro forma income statements being filed as a part of the current annual statement.

3. When an applicant has more than one facility offering continuing care, a separate application for a certificate of authority shall be made for each facility.

4. The application for a certificate of authority shall be signed under oath by the chief executive officer of the applicant.

5. Copies of the escrow agreements executed with an escrow agent pursuant to sections 376.940 and 376.945 shall be recorded as exhibits to the application for a certificate of authority.

(L. 1981 S.B. 84 § 4, subsecs. 1 to 6)

Annual statement, form, contents.

376.920. The annual statement shall be in such form as the department shall elect. The proposed provider shall include as an exhibit a copy of the proposed form of life care contract to be entered into with residents at each facility. The annual statement shall contain the following information:

(1) The name and business address of applicant;

(2) The name, address and a description of the physical property of the facility;

(3) The terms and conditions of the life care contracts to be used by the applicant, including the services to be provided to residents pursuant to the contract and the fees or charges to be paid by residents, including the method of payment of such fees or charges. The description of terms and conditions shall include:

(a) 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 requirements for entry;

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

(c) 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, if any, 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;

(d) 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;

(4) If the applicant is other than an individual, such as a corporation, partnership, or trust, a statement naming the type of legal entity and listing the interest and extent of such interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten percent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten percent or more beneficial interest;

(5) If the applicant is other than an individual, the names of the members of the board of directors, the trustees, or the managing partners;

(6) The estimated number of residents of the facility to be provided services by the applicant pursuant to the life care contracts;

(7) A statement of the provisions that have been made or will be made to provide reserve funding or security by the provider to enable the provider to fully perform his obligations pursuant to life care contracts, including, but not limited to, the establishment of escrow accounts, accounts in financial institutions, trusts, or reserve funds;

(8) A statement as to whether the applicant was or is affiliated with a religious, charitable, or other nonprofit organization, the extent of any affiliation and the extent to which the affiliate organization will be responsible for the financial and contract obligations of the applicant;

(9) If the applicant is a subsidiary corporation or the affiliate of another corporation, a statement identifying the parent corporation or the other affiliate corporation and the primary activities of such parent or other affiliate corporation;

(10) A description of the business experience of the applicant in the operation of similar facilities and, if the facility will be managed on a day-to-day basis by a corporation or organization other than the applicant, a description of the business experience of the manager in the operation or management of similar facilities. The description shall include the name and address of any professional service, firm, association, trust, partnership, or corporation in which such manager has, or which has in such manager, a ten percent or greater interest and which it is presently intended will or may provide goods, leases, or services to the facility of a value of five hundred dollars 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 such cost cannot presently be estimated;

(11) A statement as to whether the applicant, a principal, a parent or subsidiary corporation, or an affiliate has had any injunctive or restrictive order of a court of record, or any suspension or revocation of any state or federal license or permit, arising out of or relating to business activity or health care applied against it, including without limitation actions affecting a license to operate a foster care facility, a health care institution, retirement home, or a home for the aged;

(12) A statement of any periodic rates to be initially paid by residents, the method by which such rates are determined and the manner by which the provider may adjust such rates in the future. If the facility is already in operation, or if the provider operates one or more similar facilities within this state, the statement shall include tables showing the frequency and average dollar amount of each increase in periodic rates at each such facility for the previous five years or such shorter period as the facility may have been operated by the provider;

(13) A statement of the terms and conditions under which a life care contract may be canceled by the provider or

resident, including any health and financial conditions required for a person to continue as a resident and any conditions under which all or any portion of the entrance fee will be refunded by the provider;

(14) If construction or purchase of the facility has not yet been completed, a statement of the anticipated source and application of the funds to be used in such purchase or construction, including all of the following:

(a) 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 which the provider expects to incur or become obligated for prior to the commencement of operations;

(b) An estimate of the total entrance fees to be received from residents upon completion of occupancy;

(c) 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 such financing;

(d) An estimate of any funds which are anticipated to be necessary to fund start-up losses and to assure full performance of the obligations of the provider pursuant to life care contracts including, but not limited to, any reserve fund escrow required by the division pursuant to section 376.940*;

(15) Financial statements of the applicant as of a date not more than ninety days prior to the date the annual statement is filed, which shall include a balance sheet and income statements for the three most recent fiscal years of the applicant or such shorter period of time as the applicant shall have been in existence. If applicant's fiscal year ended more than ninety days prior to the date of filing there shall also be included an income statement, which need not be certified, covering the period between the date such fiscal year ended and a date not more than ninety days prior to the date the application is filed.

(L. 1981 S.B. 84 § 4, subsec. 4)

*Original rolls refer to "section 8". Section 8, now § 376.950, has nothing to do with escrow accounts. However, section 6 of the bill, now § 376.940, does. Apparently intersectional reference should have referred to section 6, and accordingly § 376.940 has been inserted here.

Seven-day rescission period, all money or property to be refunded.

376.925. The life care contract shall provide that any person entering into the contract shall have a period of seven days beginning with the first full calendar day following the last to occur of the execution of the contract, the payment of an initial sum of money as a deposit or application fee, or receipt of a copy of the provider's application or most recent annual report within which to rescind the life care contract without penalty or further obligation. In the event of such rescission, all money or property paid or transferred by such person shall be fully refunded by the provider. No person shall be required

to move into a facility until after the expiration of the seven-day rescission period.

(L. 1981 S.B. 84 § 4, subsec. 7)

Insured to be furnished application for certificate and annual statement, when.

376.930. At the time of or prior to the execution of a life care contract and the transfer of any money or other property to a provider pursuant thereto, the provider shall deliver to the person with whom the life care contract is entered into a copy of the provider's application for a certificate of authority or most recent annual statement as prescribed by section 376.915, whichever is most recent. Thereafter, the provider shall annually deliver a copy of the annual statement to each resident of the facility upon request within ten days after such annual statement is filed with the department.

(L. 1981 S.B. 84 § 4, subsec. 8)

Certificates issued for one year--nontransferable--not endorsement by department.

376.935. 1. Upon receipt of a completed application for a certificate of authority and exhibits and payment of the fee by the applicant, and proof of compliance by the applicant with the provisions of sections 376.940 and 376.945, the department shall issue a certificate of authority to the provider subject to the conditions imposed pursuant to sections 376.940 and 376.945 allowing the provider to enter into life care contracts with respect to the number of living units and facility described in the application for a certificate of authority.

2. A certificate of authority issued under this section, unless sooner revoked, shall be issued for a period of one year.

3. A certificate of authority issued pursuant to this section shall contain, in a prominent location, a statement that the issuance of a certificate of authority pursuant to this section does not constitute approval, recommendation, or endorsement by the department, nor does such a certificate of authority evidence the accuracy or completeness of the information set out in the application or the annual report of the provider.

4. All certificates of authority shall be nontransferable.

(L. 1981 S.B. 84 § 5)

Escrow account for entrance fees required, released when.

376.940. 1. As a condition for the issuance of a certificate of authority pursuant to section 376.935, the department shall require that the provider establish an escrow account with a licensed agent which provides that all of any entrance fee received by the provider prior to the date the resident is permitted to occupy his or her living unit in the facility be placed in escrow with a bank, trust company or other escrow agent approved by the department subject to the condition that such funds may be released only as follows:

(1) If the entrance fee applies to a living unit which has been previously occupied in the facility, the entrance fee shall be

released to the provider at such time as the living unit becomes available for occupancy by the new resident;

(2) If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee, or that portion of the entrance fee not to be held in escrow pursuant to section 376.945, shall be released to the provider at such time as the department is satisfied that all of the following conditions exist:

(a) 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 such permits; or, if construction of the facility has not been substantially completed, then:

a. All governmental permits or approvals necessary prior to the commencement of construction have been obtained;

b. A maximum price contract has been entered into between the provider and a general contractor responsible for construction of the facility, and a bond covering the faithful performance of the construction contract by the general contractor and the payment of all obligations arising thereunder has been executed by a recognized surety authorized to do business in this state in favor of the provider;

c. A loan agreement has been entered into by the provider for an interim construction loan in the 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, and not less than ten percent of the amount of such construction loan has been disbursed by the lender for physical construction or site preparation work completed; and

d. Orders at firm prices have been placed by the provider for not less than fifty 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 annual statement required by sections 376.915 to 376.930.

(b) 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 submitted by the provider as part of its application for certificate of authority, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied;

(c) Aggregate entrance fees received or receivable by the provider pursuant to binding life care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment are equal to not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as part of its application for certificate of authority, to be necessary to fund start-up losses and assure full

performance of the obligations of the provider pursuant to life care contracts.

2. If an entrance fee placed in an escrow account required to be established pursuant to subsection 1 of this section is not released in accordance with subsection 1 within a period of thirty-six months or such greater time as may have been specified by the provider with the consent of the department, or any extensions thereof approved by the department in writing, then such fee shall be returned by the escrow agent to whoever had made payment thereof to the provider.

3. An entrance fee held in escrow may be returned by the escrow agent to the person or persons who had made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that such person is entitled to a refund of the entrance fee.

4. Nothing in this section shall be interpreted as requiring the escrow of any nonrefundable application fee, designated as such in the annual statement required by sections 376.915 to 376.930, received by the provider from a prospective resident.

5. This section shall be applicable only to life care contracts executed after September 28, 1981.

Escrow account, amount required--principal, how released, investment.

376.945. The department shall, as a condition of the issuance of a certificate of authority pursuant to section 376.935, require that the provider establish a reserve of an amount equal to at least fifty percent of any entrance fee paid by the first occupant of a living unit under a life care contract. The reserve shall be maintained by the provider on a current basis, in escrow with a bank, trust company, or other escrow agent approved by the department. Such reserve shall be amortized and earned by the provider at the rate of one percent per month on the balance of the reserve, provided, however, that at no time shall the entrance fee reserve together with all interest earned thereon total less than an amount equal to one and one-half times the percentage of the annual long-term debt principal and interest payments of the provider applicable only to living units occupied under life care contracts. Such portion of each entrance fee as is necessary to maintain the entrance fee reserve as set forth herein shall be paid to the reserve fund for the second and all subsequent occupancies of a living unit occupied under a life care contract. In addition, each provider shall establish and maintain separately for each facility, a reserve equal to not less than five percent of the facility's total outstanding balance of contractually obligated move-out refunds at the close of each fiscal year. All reserves required hereunder for move-out refunds shall be held in liquid assets consisting of federal government or other marketable securities, deposits, or accounts insured by the federal government. This section shall be applicable only to life care contracts executed for occupancy of living units constructed after September 28, 1981.

(L. 1981 S.B. 84 § 7, A.L. 1988 H.B. 1709)

Board of directors, one member to be resident of facility.

376.950. At least one member of the board of directors shall be a resident of the facility under a standard agreement offered by the provider.

(L. 1981 S.B. 84 § 8)

Chapter 374

**Department of Insurance, Financial Institutions
and Professional Registration**

Failure to timely file report or statement, penalty.

374.215. 1. If any insurance company or other entity regulated by the director doing business in this state fails to timely make and file any statutorily required report or statement, the department shall notify such company or entity of such failure by first class mail. Any company or entity notified by the department pursuant to this section shall file such report or statement within fifteen days of receiving notification. After the expiration of such fifteen days, each day in which the company or entity fails to file such report or statement is a separate violation of this section.

2. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046. A violation of this section is a level two violation under section 374.049. The director may also suspend or revoke the certificate of authority of such person for any willful violation.

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048. A violation of this section is a level two violation under section 374.049.

(L. 1989 S.B. 333, A.L. 2007 S.B. 66)

Classification of violations--orders, penalties--enhancement of penalties--reduction of penalties--deposit and use of penalties--effective date.

374.049. 1. Violations of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to

385, RSMo, or a rule adopted or order issued by the director, are classified for the purpose of civil penalties and forfeitures into the following five classifications:

- (1) Level one violations;
- (2) Level two violations;
- (3) Level three violations;
- (4) Level four violations; and
- (5) Level five violations.

2. An order to impose a civil penalty or forfeiture, when imposed by the director in an administrative proceeding under section 374.046 on a person for any violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding the following:

- (1) No civil penalty or forfeiture for a level one violation;
- (2) One thousand dollars per each level two violation, up to an aggregate civil penalty or forfeiture of fifty thousand dollars per annum for multiple violations;
- (3) Five thousand dollars per each level three violation, up to an aggregate civil penalty or forfeiture of one hundred thousand dollars per annum for multiple violations;
- (4) Ten thousand dollars per each level four violation, up to an aggregate civil penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple violations;
- (5) Fifty thousand dollars per each level five violation, up to an aggregate civil penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple violations.

3. An order to impose a civil penalty or forfeiture, when imposed by the court in an enforcement proceeding under section 374.048 on a person for any violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding the following:

- (1) No civil penalty or forfeiture for a level one violation;
- (2) One thousand dollars per each level two violation, up to an aggregate civil penalty or forfeiture of fifty thousand dollars per annum for multiple violations;
- (3) Five thousand dollars per each level three violation, up to an aggregate civil penalty or forfeiture of two hundred thousand dollars per annum for multiple violations;
- (4) Twenty thousand dollars per each level four violation, up to an aggregate civil penalty or forfeiture of one million dollars per annum for multiple violations;
- (5) One million dollars per each level five violation, with no limit to civil penalties or forfeitures for multiple violations.

4. No civil penalty or forfeiture may be imposed against a person, unless the person has engaged in the act, practice, omission or course of business constituting the violation.

5. Any violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, which is not classified or does not authorize a specific range for a civil penalty or forfeiture for violations, shall be classified as a level one violation. In bringing an action to enforce a rule adopted by the director, unless the conduct

that violates the rule also violates the enabling statute, the violation shall be classified as a level one violation and shall not be subject to any provision in this section regarding the enhancement of a civil penalty or forfeiture.

6. The civil penalties or forfeitures set forth in this section establish a maximum range. The court, or the director in administrative enforcement, shall consider all of the circumstances, including the nature of violations to determine whether, and to any extent, a civil penalty or forfeiture is justified.

7. In any enforcement proceeding, the court, or director in administrative enforcement, may enhance the civil penalty or forfeiture with a one-classification step increase under this section, if the violation was knowing. The court, or director in administrative enforcement, may enhance the civil penalty or forfeiture with a two-level increase if the violation was knowingly committed in conscious disregard of the law.

8. In any enforcement proceeding, the court, or director in administrative enforcement, may, after consideration of the factors specified in subsection 2 of section 374.046, enhance the civil penalty or forfeiture with a one-classification step increase under this section, if the violations resulted in actual financial loss to consumers.

9. In any enforcement proceeding, the court, or director in administrative enforcement, shall reduce the civil penalty or forfeiture on that person with up to a two-classification step reduction under this section, if prior to receiving notice of the violation from the department, the person detects the violation through a self-audit or internal compliance program reasonably designed to detect and prevent insurance law violations and immediately reports the violation to the director.

10. If more than one error is caused by a single act or omission in the use of data processing equipment and such errors are not known by the violator at the time the error occurs, then any such errors shall be regarded as a single violation under this section.

11. Any civil penalty or forfeiture recovered by the director shall be paid to the treasurer and then distributed to the public schools as required by Article IX, section 7 of the Missouri Constitution.

12. The penalties and forfeitures authorized by this section govern all actions and proceedings that are instituted on the basis of conduct occurring after August 28, 2006.

(L. 2006 H.B. 1837)