

**Chapter 120-2-51**  
**Continuing Care Providers and Facilities**

**Section**

- 120-2-51-.01 Statutory Authority**
- 120-2-51-.02 Scope and Purpose**
- 120-2-51-.03 Definitions**
- 120-2-51-.04 License; Application; Issuance; Renewal; and Revisions to Agreements**
- 120-2-51-.05 Escrow Account, Escrow Agreement and Certain Minimum Provisions Required**
- 120-2-51-.06 Resident Owned Living Unit**
- 120-2-51-.07 Penalties**
- 120-2-51-.08 Severability**

**120-2-51-.01 Statutory Authority**

This Regulation is issued pursuant to the authority vested in the Commissioner of Insurance pursuant to O.C.G.A. Sections 33-2-9 and 33-45-4.

**Authority: O.C.G.A. Secs. 33-2-9, 33-45-4.**

**120-2-51-.02 Scope and Purpose**

The purpose of this Regulation is to implement the provisions of Chapter 45 of Title 33 of the Official Code of Georgia Annotated. This Regulation governs the issuance and renewal of Certificates of Authority, the minimum provisions required in escrow agreements, and specific provisions related to resident owned living units.

**Authority: O.C.G.A. Secs. 33-2-9, 33-45-4.**

**120-2-51-.03 Definitions**

As used in this Regulation, the term:

(1) "Continuing care" means furnishing pursuant to a continuing care agreement:

(a) Lodging that is not:

- (i) In a skilled nursing facility, as such term is defined in O.C.G.A. Section 31-6-2(34);
- (ii) An intermediate care facility, as such term is defined in O.C.G.A. Section 31-6-2(22);

- (iii) An assisted living community, as such term is defined in O.C.G.A. Section 31-7-12.2; or
  - (iv) A personal care home, as such term is defined in O.C.G.A. Section 31-7-12;
- (b) Food; and
- (c) Nursing care provided in a 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 upon payment of an entrance fee including skilled or intermediate nursing services and, at the discretion of the continuing care provider, personal care services including, without limitation, assisted living care services designated by the continuing care agreement, including such services being provided pursuant to a contract to ensure the availability of such services to an individual not related by consanguinity or affinity to the provider furnishing such care upon payment of an entrance fee.

The term "continuing care" shall not include continuing care at home.

- (2) "Continuing care agreement" means a contract or agreement to provide continuing care, continuing care at home, or limited continuing care. Continuing care agreements include agreements to provide care for any duration, including agreements that are terminable by either party.
- (2.1) "Continuing care at home" means the furnishing of services pursuant to a continuing care agreement at a location other than at a facility and which includes the obligation to provide nursing care, assisted living care, or personal care home services. A continuing care at home agreement may, but is not required to, include an obligation to provide food.
- (3) "Entrance fee" means an initial or deferred payment of a sum of money or property made as full or partial payment to assure the resident continuing care, limited continuing care, or continuing care upon the purchase of a resident owned living unit; provided, however, that any such initial or deferred payment which is greater than or equal to 12 times the monthly care fee shall be presumed to be an entrance fee so long as such payment is intended to be a full or partial payment to assure the resident lodging in a residential unit. An accommodation fee, admission fee, or other fee of similar form and application greater than or equal to 12 times the monthly care fee shall be considered to be an entrance fee. Such term shall not include any portion of the purchase or sale of a resident owned living unit, including, but not limited to, any down payment or earnest money payment for the purchase and sale of a resident owned living unit.
- (4) "Facility" means a place which is owned or operated by a provider and provides continuing care or limited continuing care. Such term includes a facility which contains resident owned living units.
- (5) "Licensed" means that the provider has obtained a Certificate of Authority from the Department.
- (6) "Limited continuing care" means furnishing pursuant to a continuing care agreement:
- (a) Lodging that is not:

- (i) In a skilled nursing facility, as such term is defined in O.C.G.A. Section 31-6-2(34);
- (ii) An intermediate care facility, as such term is defined in O.C.G.A. Section 31-6-2(22);
- (iii) An assisted living community, as such term is defined in O.C.G.A. Section 31-7-12.2; or
- (iv) A personal care home, as such term is defined in O.C.G.A. Section 31-7-12;

(b) Food; and

(c) Personal services, whether such personal services are provided in a facility such as a personal care home or an assisted living community or in another setting designated by the continuing care agreement, to an individual not related by consanguinity or affinity to the provider furnishing such care upon payment of an entrance fee.

Such term shall not include continuing care at home.

- (7) "Monthly care fee" means the fee charged to a resident for continuing care or limited continuing care on a monthly or periodic basis. Monthly care fees may be increased by the provider to provide care to the resident as outlined in the continuing care agreement. Periodic fee payments or other prepayments shall not be monthly care fees.
- (8) "Nursing care" means services which are provided to residents of skilled nursing facilities or intermediate care facilities.
- (9) "Personal services" means, but is not limited to, such services as individual assistance with eating, bathing, grooming, dressing, ambulation, and housekeeping; supervision of self-administered medication; arrangement for or provision of social and leisure services; arrangement for appropriate medical, dental, nursing, or mental health services; and other similar services which the department may define. Personal services may be provided at a facility or at a home on or off site of a facility. Personal services shall not be construed to mean the provision of medical, nursing, dental, or mental health services. Personal services provided, if any, shall be designated in the continuing care agreement.
- (10) "Provider" means the owner or operator, whether a natural person, partnership, or other unincorporated association, however organized, 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, limited continuing care, or continuing care at home for a fixed or variable fee, or for any other remuneration of any type for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments.
- (11) "Resident" means a purchaser of or a nominee of or a subscriber to a continuing care agreement. Such an agreement may permit a resident to live at a home on or off site of a facility but shall not be construed to give the resident a part ownership of the facility in which the resident is to reside unless expressly provided for in the agreement.

- (12) "Resident owned living unit" means a residence or apartment, the purchase or sale of which is not included in an entrance fee, which is a component part of a facility and in which the resident has an individual real property ownership interest.
- (13) "Residential unit" means a residence or apartment in which a resident lives that is not a skilled nursing facility as defined in O.C.G.A. Section 31-6-2(34), an intermediate care facility as defined in O.C.G.A. Section 31-6-2(22), an assisted living community as defined in O.C.G.A. Section 31-7-12.2, or a personal care home as defined in O.C.G.A. Section 31-7-12.
- (14) Unless the context otherwise requires, terms found in this Regulation shall be used as defined in O.C.G.A. Sections 33-1-2 and 33-45-1 *et seq.* Other terminology shall be used in accordance with the Georgia Insurance Code or industry usage, if not otherwise defined in the Georgia Insurance Code.

**Authority: O.C.G.A. Secs. 33-1-2, 33-2-9, 33-45-1 *et seq.***

#### **120-2-51-.04 License; Application; Issuance; Renewal; and Revisions to Agreements**

- (1) No person may engage in the business of providing continuing care, limited continuing care, continuing care at home, issue continuing care agreements in Georgia, or hold oneself out to the public as a provider without first obtaining a valid certificate of authority issued by the Commissioner of Insurance.
- (2) Each applicant shall file with the Commissioner an application for a certificate of authority upon a form to be furnished by the Commissioner, which will be available on the Georgia Insurance Department's website. Such application shall include or have attached the following information and documents:
- (a) All basic organizational documents of the applicant, including, but not limited to, the articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, membership agreement, or other applicable documents, and all amendments to those documents;
  - (b) The bylaws, rules and regulations or similar documents regulating the conduct or the internal affairs of the applicant;
  - (c) Proof from the Georgia Secretary of State's Office that the applicant is qualified to do business in this state;
  - (d) Organizational chart that accurately reflects the relationship of the applicant to any parent, subsidiary, or affiliated person or organization;

- (e) A list of all individuals who are the officers, directors, partners, members, administrators, stockholders owning more than 10 percent of the stock of the applicant, or any person occupying a similar position or performing similar duties or functions, as applicable. Include the full name, business address and position held for each of these individuals. Also include a list containing the same information for any parent or affiliated person or organization that is controlling, controlled by, or under common control with the applicant;
  - (f) A biographical affidavit and background report for each natural person listed in Regulation 120-2-51-.04(2)(e) above;
  - (g) Copies of proposed agreements to be used in furnishing continuing care, including but not limited to continuing care agreements and escrow agreements; disclosure statements; addenda; and amendments;
  - (h) A list of all Facilities currently or previously owned, managed or developed by applicant, an affiliate of applicant, or any principal thereof. Provide the name, address, city and state of each Facility listed and explain the Facility's existing or past relationship with applicant, an affiliate of applicant, or any principal thereof. Specify the current status of each Facility listed and include any administrative actions or financial problems that existed while applicant, an affiliate of applicant, or any principal thereof, was associated with the Facility, including any such occurrences up to one year after the relationship was terminated;
  - (i) The latest financial statement, audited by an independent CPA, of the applicant and any parent company. Also include the latest unaudited financial statements attested to by the Chief Financial Officer for each quarter ended subsequent to the date of the last audit;
  - (j) Fee as provided in O.C.G.A. Section 33-8-1 for a continuing care provider; and
  - (k) Any other materials the Commissioner deems necessary to adequately assess the merits of the application.
- (3) Upon issuance, a license pursuant to this Regulation is valid until June 1, and is to be renewed annually on or before May 31 of the first year issued, and each year thereafter, on a form to be prescribed by the Commissioner. This form will be available on the Georgia Insurance Department's website prior to May 31 each year. Failure to file a renewal application, and any required documents or information, on or before May 31 will result in the non-continuance of the license. Licensees that fail to renew their licenses in a timely manner and that desire to be relicensed will be required to reapply. Along with the renewal application, each licensed provider shall file the following with the renewal package:
- (a) An annual statement to be submitted on a form prescribed by the Commissioner, which shall be available on the Georgia Insurance Department's website;

- (b) Annual revised disclosure statement pursuant to O.C.G.A. Section 33-45-6;
  - (c) An actuary's opinion as to the actuarial financial condition of the provider's continuing care or limited continuing care operations, which shall include, but not be limited to, an estimate of the capacity of the provider to meet its contractual obligation to the residents or prospective residents with consideration given to expected rates of mortality and morbidity, expected refunds, and expected capital expenditures, unless the provider requests in writing an exemption from this requirement and the Commissioner determines that there is good cause to permit such request; and
  - (d) Fee as provided in O.C.G.A. Section 33-8-1 for a continuing care provider.
- (4) Should a licensed provider revise or amend any agreements submitted pursuant to Regulation 120-2-51-.04(2)(g), such revisions or amendments must be submitted to the Department for approval prior to being used by the provider.

**Authority: O.C.G.A. Secs. 33-1-2, 33-2-9, 33-45-4, 33-45-5, 33-45-6, 33-45-7.**

**120-2-51-.05 Escrow Account, Escrow Agreement and Certain Minimum Provisions Required**

- (1) Any portion of the entrance fee paid by a resident or prospective resident to the provider shall be held in an escrow account which shall be governed by an escrow agreement, unless the provisions set forth in O.C.G.A. Section 33-45-8 regarding the release of escrow funds have been met at the time the entrance fee for a resident owned living unit is paid by the resident to the provider. If an escrow agreement is required, such agreement shall include in writing at least the following minimum provisions:
- (a) The purpose of the escrow agreement pursuant to O.C.G.A. Section 33-45-8(a);
  - (b) Any portion of the entrance fee paid by a resident to the provider shall be held in an escrow account governed by the escrow agreement;
  - (c) Definitions set forth in O.C.G.A. Section 33-45-1 *et seq.* shall be incorporated into the escrow agreement;
  - (d) Any portion of the entrance fee paid by a resident or prospective resident to the provider is subject to the terms of the escrow agreement and shall be deposited by the provider with the bank promptly after receipt;
  - (e) The bank shall be appointed as escrow agent;
  - (f) The bank shall hold and distribute all entrance fees deposited with the bank in accordance with the escrow agreement;

- (g) Any portion of the entrance fee paid by a resident or prospective resident to the provider that is held for ninety (90) days or more shall earn interest. Such interest shall be credited at least quarterly to the resident's account(s) and shall belong to the resident;
- (h) The bank shall disburse funds from the escrow account payable to the resident or prospective resident upon the receipt of documentation signed by a representative of the provider certifying that such funds may be released in accordance with the terms of the escrow agreement and any applicable law or regulations, a copy of which shall be attached to the escrow agreement, or upon the bank's determination that such funds may be released to the resident in accordance with O.C.G.A. Section 33-45-8. The bank may rely upon the total disbursement amount included in such signed documentation from the provider and shall have no obligation to verify the accuracy of any such documentation. Upon receipt by the bank of such documentation, the bank shall disburse funds to the resident or prospective resident within five (5) banking business days;
- (i) The bank shall disburse funds from the escrow account payable to the provider upon the receipt of documentation signed by a representative of the provider certifying that such funds may be released in accordance with the terms of the escrow agreement and any applicable law or regulations, a copy of which shall be attached to the escrow agreement. The bank may rely upon the total disbursement amount included in such signed documentation from the provider and shall have no obligation to verify the accuracy of any such documentation. Upon receipt by the bank of such documentation, the bank shall disburse funds to the provider in accordance with the provider's instructions within five (5) banking business days;
- (j) The bank shall be entitled to rely upon the written notices, instructions and directions of the provider and shall have no liability for any action taken based upon such reliance;
- (k) The bank shall not be liable for the following if done in good faith: any errors of judgement, any act committed, any step taken or omitted, any mistake of fact or law, or for anything that the bank may do or refrain from doing in connection therewith. However, the bank shall be liable for its own negligence or willful misconduct;
- (l) The bank may consult with legal counsel of its own choice should any dispute or question arise pursuant to the escrow agreement, or bank's duties thereunder. Should a dispute arise related to the proper disbursement of funds by the bank, the bank, upon ten (10) days prior notice to the provider, may file a suit in interpleader for the purpose of determining the rights of the parties to any funds held in escrow and may deposit such funds with the court. The provider shall reimburse the bank for its reasonable and legitimate legal expenses so incurred to the extent allowed by Georgia law;
- (m) The escrow agreement may be terminated by either the bank or the provider. Upon termination, the bank shall deliver the escrow agreement and all funds held in the escrow account(s) (including any income earned thereon) and any and all related instruments or

documents to a successor escrow agent. Such termination shall become effective upon the date such funds and any related instruments or documents are delivered to the successor escrow agent. Upon delivery of all funds and any related instrument or documents in accordance with this paragraph, the bank shall thereafter be discharged from any further obligations pursuant to the escrow agreement. All power, authority, duties and obligations of the bank shall henceforth apply to the successor escrow agent; and

- (n) Contact information, including name and address, for the provider, bank and Department for notice, instruction and direction purposes.
- (2) In addition to the required minimum provisions to be included in an escrow agreement pursuant to Regulation 120-2-51-.05(1), as set forth above, the following documents must be attached as exhibits to such escrow agreement:
- (a) A document setting forth the bank's fees in connection with the escrow agreement;
  - (b) A form to be used to request disbursement of funds from the bank to the resident or prospective resident pursuant to Regulation 120-2-51-.05(1)(h). Such form must list the total disbursement amount and must certify that the resident or prospective resident has sent written notice to the provider requesting a refund and that either (i) such resident or prospective resident has rescinded his or her reservation agreement or continuing care agreement within the period provided in such agreements, or (ii) the reservation agreement or continuing care agreement has been terminated by the resident, prospective resident or provider in accordance with its stated terms; and
  - (c) A form to be used to request disbursement of funds from the bank to the provider pursuant to Regulation 120-2-51-.05(1)(i). Such form must list the total disbursement amount and certify the following:
    - (i) The provider has presold at least fifty (50) percent of the residential units, having received at least a ten (10) percent deposit on each residential unit presold; AND
    - (ii) The provider has received a commitment for any first mortgage loan or other financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; AND
    - (iii) Aggregate entrance fees received or receivable by the provider pursuant to binding continuing care agreements, plus the anticipated proceeds of any first mortgage loan or other financing commitment, are equal to not less than ninety (90) percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility, and not less than ninety (90) percent of the funds estimated in the statement of cash flows submitted by the provider as part of its disclosure statement, to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care contracts shall be on hand; OR

- (iv) The continuing care facility is fully financed or open and operational, the continuing care facility is compliant with the minimum financial reserves required by O.C.G.A. Section 33-45-11, and sufficient funds are maintained in escrow to meet the provider's refund obligations under O.C.G.A. Sections 33-45-8 (b) (1), (2) or (3).

**Authority: O.C.G.A. Secs. 33-2-9, 33-45-4, 33-45-8, 33-45-11.**

## **120-2-51-.06 Resident Owned Living Unit**

### **(1) Continuing Care Agreements**

- (a) The lodging component of a continuing care agreement for resident owned living units may be expressed in a real estate purchase agreement for a resident owned living unit or other documents that govern the purchase and sale of such resident owned living unit, including, but not limited to, condominium declarations, homeowners association rules, and any other documents required for compliance with real property law related to the purchase and sale of resident owned living units. However, such documents must be incorporated by reference into the continuing care agreement for the resident owned living unit and a copy of each referenced documents must be attached as an exhibit.
- (b) Continuing care agreements for resident owned living units may provide that the entrance fee can be collected simultaneously with the closing of the purchase and sale of a resident owned living unit.

### **(2) Funds or Property for Purchase and Sale**

Funds or property transferred for the purchase and sale of a resident owned living unit shall not be considered to be funds or property transferred for the care of a resident and, therefore, shall not be subject to the requirements set forth in OCGA 33-45-7(a)(6). Such funds or property shall be governed by applicable real property law related to the purchase and sale of resident owned living units.

### **(3) Commissions**

Funds payable to a duly licensed real estate broker as commissions related to the purchase and sale of the real property interest in a resident owned living unit shall not be considered to be a fee charged by the provider for the transfer of membership or sale of an ownership right.

### **(4) Reporting and Disclosure**

When reporting or disclosure of any information is required under any other body of law governing the purchase and sale of resident owned living units, including, but not limited to,

real property law or condominium law, all documents required for such reporting and disclosure shall be made available to the Department of Insurance immediately upon request.

**Authority: O.C.G.A. Secs. 33-2-9, 33-45-4, 33-45-7.**

**120-2-51-.07 Penalties.**

Any provider, or any agent, counselor, representative, officer, or employee of such provider, failing to comply with the requirements of this Regulation shall be subject to such penalties as may be appropriate under the insurance laws of this State.

**Authority: O.C.G.A. Secs. 33-2-9, 33-45-1 *et seq.***

**120-2-51-.08 Severability.**

If any provision of this Regulation or the application of it to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of the rules herein which can be given effect without the invalid portion. To that end, the provisions of this Regulation are declared to be severable.

**Authority: O.C.G.A. Secs. 33-2-9, 33-45-1 *et seq.***