



TO: LifeSpan CCRC Members

FROM: Danna Kauffman
Sr. Vice President of Public Policy

RE: Implementation of House Bill 952: Continuing Care Agreements and Related Agreements

DATE: June 16, 2009

On July 1, 2009, HB952: Continuing Care Agreements and Related Agreements will take effect. Please forward this information to any staff (including outside contractors, attorneys, etc.) responsible for drafting or submitting agreements to the Department of Aging.

As of July 1, 2009, the following will occur –

CHANGE IN APPROVAL TIMEFRAME

Currently, the Department of Aging has 180 days to approve a contract or it is deemed approved. Under House Bill 952, the timeframe has been lessened to 120 days with the following structure.

- Within 120 days after receipt of a continuing care agreement or any other related agreement submitted by a provider, the Department is required to determine whether the agreement complies with the law – COMAR 32.02.01 and Subtitle 4 of Title 10 of the Human Services Article.
- At any time during the review process, the Department may submit comments to or request additional information from the provider to determine whether the agreement complies with the law.
- If the Department submits comments or a request for additional information, the 120–day review period is suspended.

- On receipt of any requested information or modifications to the agreement necessitated by the Department’s comments, the Department, within the number of days remaining in the 120–day review period, must (1) complete its review to determine whether the agreement meets the requirements of this subtitle; and (2) approve or disapprove the agreement.
- If the Department does not approve the agreement, the Department must notify the provider in writing, including citations to the specific provisions of law that the Department determined were not complied with in the agreement.
- A provider may appeal the disapproval of an agreement under the Administrative Proceedings Act.
- If the Department does not act within 120 days, the agreement is deemed approved.
- The provider must maintain the continuing care agreement at the facility and make it available for inspection by DHMH for both nursing home surveyors and assisted living surveyors.

EXAMPLE: Provider submits agreement on Day One. The Department of Aging takes 40 days to initially review the agreement and send comments to the Provider. When the Provider receives the agreement, the clock stops. When the Provider returns the agreement with changes, the Department has the remaining 80 days to review and approve the agreement. If the Department reviews the agreement for another 20 days and sends comments back, the Department has 60 days to complete its work after the Provider returns the agreement and so forth.

RECOMMENDED ACTIONS:

1. Keep a complete paper trail on the submission.
 - a. Send the initial agreements to the Department for review by certified mail, return receipt requested.
 - b. Every 30 days – 45 days contact the Department via email for a status update on the submission. If you do call, follow-up with an email to confirm the conversation. During the hearings, the Department noted that the Department has sent responses to the providers and the providers have “misplaced” the documents. Providers need to avoid this scenario and allegation by the Department by documenting all communications.

- c. Any follow-up submissions should be documented and verified that the Department has received the information.
2. Submissions must be complete and accurate. Please review the regulations and statutory law prior to submitting any documents. In addition, cross-reference the continuing care agreement with the worksheet used by the Department. This information can be found on the LifeSpan website under Public Policy News, CCRC, Other Initiatives. www.lifespan-network.org.
3. **REMEMBER** – these agreements are being reviewed by attorneys. It is recommended that prior to submitting agreements to the Department, providers should have them reviewed by attorneys familiar with continuing care laws.

REVIEW MODIFICATIONS

House Bill 952 changed the Department's procedure for how it can review a submitted agreement. Under House Bill 952 –

- If a provider is seeking approval for a modification to an approved continuing care agreement or other related agreement, the Department must limit its review to: (1) the section of the agreement being modified and any sections directly affected by the modification; and (2) any section of the agreement that may have been affected by a change in the law or a regulation that was enacted after the Department approved the agreement.
- If the provider executes a separate assisted living agreement or comprehensive care agreement, the provider IS NOT required to submit the assisted living agreement or comprehensive care agreement or any requests for modifications to the Department for approval.

RECOMMENDED ACTIONS:

1. Again, prior to submission, please review the materials on the LifeSpan website (regulations, Department worksheet to ensure that all components are contained in the agreement, etc.).
2. The Department has noted that there are three sections in the nursing home model agreement that conflict with the continuing care laws. These sections are noted on page 17 of the Department worksheet. LifeSpan has also modified the Resident Agreement and Resident Agent Agreement to reflect the changes necessary to be in compliance with the

continuing care laws. Please make sure that your agreement reflects these changes. The agreements are also on the LifeSpan website.

In addition to passing House Bill 952, the House Health and Government Operations Committee and the Senate Finance Committee sent a letter to the Department requesting a legislative briefing on these changes prior to the 2010 Session. The letter also instructed the Department to work with the industry to reform the continuing care oversight process. Consequently, it is extremely important that providers review the continuing care laws to ensure that all submissions comply with the laws.

CONTINUED CCRC REFORM EFFORTS – June 4th Meeting

In order to continue LifeSpan's efforts to reform the continuing care oversight system, at the meeting on June 4th, the providers in attendance decided to form two subcommittees to review issues more in-depth. These subcommittees include: (1) creating model agreements; and (2) examining financial and operating issues within CCRCs. **Attached is a sign-up sheet for these committees.** We understand the constraints placed on your time. While there may be some face-to-face meetings, the majority of meetings will be by conference call and by email. After initial LifeSpan meetings, we will try to work with the Department of Aging on these issues, especially on the creation of model agreements.

The providers also decided to work more closely with CCRC residents, in the form of officers of resident councils and resident Board members. It was noted that a few years ago, LifeSpan sponsored "meet and greets" for these individuals in the form of luncheons, etc. These events were hosted by LifeSpan members and allowed these residents to get together and discuss issues, etc. It also gave LifeSpan and the providers the ability to discuss issues with the residents so that the providers and residents can work together on issues.

Lastly, the need to educate legislators was again emphasized at the meeting. **THIS IS CRITICAL.** We need to continue to build support with the legislature. The best way to build this support is to invite legislators to your community, provide them a tour, allow them meet residents, etc. LifeSpan has created a document listing each LifeSpan member with its legislator. Please review this information and invite legislators to your community. The information can be found at http://www.lifespan-network.org/advocacy2_legisnews.asp. In addition, please contact either Danna Kauffman at dkauffman@lifespan-network.org or Sushant Sidh at ssidh@capitol-strategies.com and we can help you plan for this event.