



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3813

by Rep. Kathleen Willis

SYNOPSIS AS INTRODUCED:

210 ILCS 135/14.5 new
815 ILCS 510/2

from Ch. 121 1/2, par. 312

Amends the Community-Integrated Living Arrangements Licensure and Certification Act. Adds provisions concerning required disclosures and contract requirements for providers of community-integrated living arrangements. Provides that at the time of or prior to the execution of a contract to provide continuing care at a community-integrated living arrangement, or at the time of or prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever shall first occur, a provider shall deliver a disclosure statement to the person with whom the contract is to be entered into that contains specified information. Provides that all contracts for continuing care at a community-integrated living arrangement used by a provider shall include specified information. Contains provisions requiring a community-integrated living arrangement to make certain disclosures to the Department of Human Services. Provides that residents may receive, upon request, specified information from providers and may submit comments. Provides that providers shall, to the maximum extent practicable, offer specified explanations, inform residents of certain matters, and make use of specified standards and practices. Provides that a violation of these provisions by a provider of a community-integrated living arrangement shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act. Makes a corresponding change in the Uniform Deceptive Trade Practices Act. Makes other changes.

LRB100 10419 MJP 20617 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Community-Integrated Living Arrangements
5 Licensure and Certification Act is amended by adding Section
6 14.5 as follows:

7 (210 ILCS 135/14.5 new)

8 Sec. 14.5. Required disclosures; contract requirements.

9 (a) As used in this Section:

10 "Entrance fee" means an initial or deferred transfer to a
11 provider of a sum of money or other property made or promised
12 to be made as full or partial consideration for acceptance of a
13 specified individual as a resident in a community-integrated
14 living arrangement. No part of any fee payable on a periodic
15 basis for board, lodging, medical, or other health related
16 services rendered by the provider to a resident shall be
17 considered as constituting an entrance fee. No application
18 charge or other sum payable in addition to such periodic fees,
19 which does not exceed 4 times such periodic fees, shall be
20 considered as constituting an entrance fee.

21 "Continuing care" means the furnishing to an individual,
22 other than an individual related by consanguinity or affinity
23 to the person furnishing such care, of board and lodging

1 together with nursing services, medical services, or other
2 health related services, regardless of whether or not the
3 lodging and services are provided at the same location,
4 pursuant to a contract effective for the life of the individual
5 or for a period in excess of one year.

6 "Long term care services" means a combination of nursing
7 home care, in-home nursing care, assisted living services,
8 independent living services, home health care, personal care,
9 homemaking, case management, or comparable services designed
10 to enable a functionally impaired resident to maintain himself
11 or herself and his or her living unit, as safely and
12 comfortably as is reasonably possible in a continuing care
13 setting as defined herein. "Long term care services" includes
14 necessary or medically necessary diagnostic, preventive,
15 therapeutic, rehabilitative, or custodial care.

16 "Living unit" means a room, apartment, cottage, or other
17 area within a community-integrated living arrangement set
18 aside for the exclusive use or control of one or more
19 identified individuals.

20 "Provider" means a person, including, but not limited to,
21 an agency licensed under this Act, undertaking to provide
22 continuing care in a community-integrated living arrangement
23 that charges an entrance fee.

24 "Residents association" means an organization formed by
25 the residents of a community-integrated living arrangement to
26 represent the residents' interests before providers and to

1 promote and provide for the general welfare of residents.

2 (b) At the time of or prior to the execution of a contract
3 to provide continuing care at a community-integrated living
4 arrangement, or at the time of or prior to the transfer of any
5 money or other property to a provider by or on behalf of a
6 prospective resident, whichever shall first occur, the
7 provider shall deliver a disclosure statement to the person
8 with whom the contract is to be entered into, the text of which
9 shall contain, to the extent not clearly and completely set
10 forth in the contract for continuing care at a
11 community-integrated living arrangement attached as an exhibit
12 thereto, at least the following information:

13 (1) The name and business address of the provider and a
14 statement of whether the provider is a partnership,
15 corporation, or other type of legal entity.

16 (2) The names of the officers, directors, trustees, or
17 managing or general partners of the provider and a
18 description of each such person's occupation with the
19 provider.

20 (3) A description of the business experience of the
21 provider in the operation or management of similar
22 community-integrated living arrangements and of the
23 manager of the community-integrated living arrangement if
24 the community-integrated living arrangement will be
25 managed on a day-to-day basis by an organization other than
26 the provider. The description shall include information on

1 any matter in which the manager or provider (A) has been
2 convicted of a felony or pleaded nolo contendere to a
3 felony charge, or been held liable or enjoined in a civil
4 action by final judgment, if the felony or civil action
5 involved fraud, embezzlement, fraudulent conversion, or
6 misappropriation of property or (B) is subject to a
7 currently effective injunctive or restrictive court order
8 or, within the past 5 years, had any State or federal
9 license or permit suspended or revoked as a result of an
10 action brought by a governmental agency or department, if
11 the order or action arose out of or related to business
12 activity of health care, including actions affecting a
13 license to operate a foster care facility, nursing home,
14 retirement home, home for aged, or community-integrated
15 living arrangement subject to this Act or a similar law in
16 another state.

17 (4) A statement as to whether or not the provider is,
18 or is affiliated with, a religious, charitable or other
19 nonprofit organization; the extent of the affiliation, if
20 any; the extent to which the affiliate organization will be
21 responsible for the financial and contract obligations of
22 the provider; and the provision of the federal Internal
23 Revenue Code, if any, under which the provider or affiliate
24 is exempt from the payment of income tax.

25 (5) The location and description of the physical
26 property or properties of the community-integrated living

1 arrangement, existing or proposed and, to the extent
2 proposed, the estimated completion date or dates, whether
3 or not construction has begun and the contingencies subject
4 to which construction may be deferred.

5 (6) Certified financial statements of the provider,
6 including a balance sheet as of the end of the most recent
7 fiscal year and income statements for the 3 most recent
8 fiscal years of the provider or such shorter period of time
9 as the provider shall have been in existence. If the
10 provider's fiscal year ended more than 90 days prior to the
11 date the application is filed; interim financial
12 statements as of a date not more than 90 days prior to such
13 filing shall be included, but need not be certified.

14 (7) If the operation of the community-integrated
15 living arrangement has not yet commenced, a statement of
16 the anticipated source and application of the funds used or
17 to be used in the purchase or construction of the
18 community-integrated living arrangement, including: (A) an
19 estimate of the cost of purchasing or constructing and
20 equipping the community-integrated living arrangement
21 including such related costs as financing expense, legal
22 expense, land costs, occupancy development costs, and all
23 other similar costs which the provider expects to incur or
24 become obligated for prior to the commencement of
25 operations; (B) a description of any mortgage loan or other
26 long-term financing intended to be used for the financing

1 of the community-integrated living arrangement, including
2 the anticipated terms and costs of such financing; (C) an
3 estimate of the total entrance fees to be received from
4 residents at or prior to commencement of operation of the
5 community-integrated living arrangement; (D) an estimate
6 of the funds, if any, which are anticipated to be necessary
7 to fund start-up losses and provide reserve funds to assure
8 full performance of the obligations of the provider under
9 contracts for continuing care at a community-integrated
10 living arrangement; (E) a projection of estimated income
11 from fees and charges other than entrance fees, showing
12 individual rates presently anticipated to be charged and
13 including a description of the assumptions used for
14 calculating the estimated occupancy rate of the
15 community-integrated living arrangement and the effect on
16 the income of the community-integrated living arrangement
17 of government subsidies for health care services, if any,
18 to be provided pursuant to the contracts for continuing
19 care at community-integrated living arrangements; and (F)
20 such other material information concerning the
21 community-integrated living arrangement or the provider as
22 the provider wishes to include.

23 (8) In the event the provider has had an actuarial
24 report prepared within the prior 2 years, the summary of a
25 report of an actuary that estimates the capacity of the
26 provider to meet its contractual obligations to the

1 residents.

2 (9) Forecasted financial statements for the provider
3 of the next 5 years, including a balance sheet, a statement
4 of operations, a statement of cash flows, and a statement
5 detailing all significant assumptions, compiled by an
6 independent certified public accountant. Reporting
7 routine, categories, and structure may be further defined
8 by rules or forms adopted by the Secretary of Human
9 Services.

10 (10) The estimated number of residents of the
11 community-integrated living arrangement to be provided
12 services by the provider pursuant to the contract for
13 continuing care.

14 (11) Any other material information concerning the
15 community-integrated living arrangement or the provider
16 which, if omitted, would lead a reasonable person not to
17 enter into the contract.

18 The cover page of the disclosure statement shall state, in
19 a prominent location and in boldface type, the date of the
20 disclosure statement, the last date through which that
21 disclosure statement may be delivered if not earlier revised,
22 and that the delivery of the disclosure statement to a
23 contracting party before the execution of a contract for the
24 provision of continuing care is required by this Section but
25 that the disclosure statement has not been reviewed or approved
26 by any government agency or representative to ensure accuracy

1 or completeness of the information set out. A copy of the
2 standard form of contract for continuing care used by the
3 provider shall be attached to each disclosure statement. The
4 Secretary of Human Service may prescribe a standardized format
5 for the disclosure statement required by this subsection. The
6 disclosure statement shall be in plain English and in language
7 understandable by a layperson and combine simplicity and
8 accuracy to fully advise residents of the items required by
9 this subsection. The Department may require a provider to alter
10 or amend its disclosure statement in order to provide full and
11 fair disclosure to prospective residents. The Department may
12 also require the revision of a disclosure statement which it
13 finds to be unnecessarily complex, confusing, or illegible.

14 (c) All contracts for continuing care at a
15 community-integrated living arrangement used by a provider
16 shall provide that:

17 (1) The party contracting with the provider may rescind
18 the contract at any time prior to occupying a living unit
19 in the community-integrated living arrangement, in which
20 event the party shall, within a reasonable period, receive
21 a refund of all money or property transferred to the
22 provider, less (A) those costs specifically incurred by the
23 provider or community-integrated living arrangement at the
24 request of the party and described in the contract or an
25 addendum thereto signed by the party; and (B) a reasonable
26 service charge, if set out in the contract, not to exceed

1 1% of the entrance fee. If the unit is available for
2 occupancy on the occupancy date agreed upon in the
3 contract, and the party has failed to occupy said unit, the
4 party shall be deemed to have rescinded the contract,
5 unless the party and the provider agree in writing to
6 extend the occupancy date.

7 (2) If the unit is not available for occupancy on the
8 date agreed upon in the contract, and the party has not
9 rescinded the contract, the contract shall be
10 automatically canceled, unless the party and the provider
11 agree in writing to extend the occupancy date. If the
12 contract is automatically canceled the party shall, within
13 a reasonable period, receive a refund of all money or
14 property transferred to the provider plus a reasonable
15 inconvenience fee, if set out in the contract, not to
16 exceed 1% of the amount of the entrance fee.

17 (3) If a resident dies before occupying a living unit
18 in the community-integrated living arrangement, the
19 contract is automatically canceled and the legal
20 representative of the resident shall receive a refund of
21 all money or property transferred to the provider, less (A)
22 those costs specifically incurred by the provider or
23 community-integrated living arrangement at the request of
24 the resident and described in the contract or an addendum
25 thereto signed by the resident and (B) a reasonable service
26 charge, if set out in the contract, not to exceed 1% of the

1 entrance fee.

2 (4) The entrance fee minus no more than 1% for each
3 month of occupancy shall be refunded to the resident when
4 the resident leaves the community-integrated living
5 arrangement or to the legal representative of a resident if
6 the resident dies.

7 (5) The services provided or proposed to be provided
8 under contracts for care at the community-integrated
9 living arrangement, including the extent to which medical
10 care is furnished, and specifying those services which are
11 included in the basic contract and those made available at
12 or by the community-integrated living arrangement at extra
13 charge.

14 (6) A description of all fees required of residents,
15 including the entrance fee and periodic charges, if any.
16 The description shall include: (A) a statement of the fees
17 that will be charged if the resident marries while at the
18 community-integrated living arrangement, and a statement
19 of the terms concerning the entry of a spouse to the
20 community-integrated living arrangement and the
21 consequences if the spouse does not meet the requirement
22 for entry, (B) the circumstances under which the resident
23 will be permitted to remain in the community-integrated
24 living arrangement in the event of possible financial
25 difficulties of a resident, (C) the conditions under which
26 a living unit occupied by a resident may be made available

1 by the community-integrated living arrangement to a
2 different or new resident other than on the death of the
3 original resident, and (D) the manner by which the provider
4 may adjust periodic charges or other recurring fees and the
5 limitations on such adjustments, if any. If the
6 community-integrated living arrangement is already in
7 operation, or if the provider or manager operates one or
8 more similar community-integrated living arrangements
9 within the State, there shall be included tables showing
10 the frequency and average dollar amount of each increase in
11 periodic rates at each such community-integrated living
12 arrangement for the previous 5 years or such shorter period
13 as the community-integrated living arrangement may have
14 been operated by the provider or manager.

15 (7) The health and financial conditions required for an
16 individual to be accepted as a resident and to continue as
17 a resident once accepted, including the effect of any
18 change in the health or financial condition of a person
19 between the date of entering a contract for continuing care
20 at a community-integrated living arrangement and the date
21 of initial occupancy of a living unit by that person.

22 (8) The provisions that have been made or will be made,
23 if any, to provide reserve funding or security to enable
24 the provider to fully perform its obligations under
25 contracts to provide continuing care at a
26 community-integrated living arrangement, including the

1 establishment of escrow accounts, trusts, or reserve
2 funds, together with the manner in which such funds will be
3 invested and the names and experience of persons who will
4 make the investment decisions.

5 Any contract drawn in violation of this subsection may be
6 rescinded by the resident and the resident shall be entitled to
7 a full refund of the entrance fee.

8 (d) For the purpose of this subsection, "market" shall
9 include, but not be limited to, establishment of a waiting
10 list, acceptance of money, property, or other consideration, or
11 distribution of marketing brochures by the provider.

12 Any provider intending to market or develop a
13 community-integrated living arrangement pursuant to a contract
14 which would require prepayment for some or all of the a
15 community-integrated living arrangement's services or
16 intending to market or develop additional units of a
17 community-integrated living arrangement shall forward a copy
18 of the following information to the Department within 30 days
19 following the implementation of marketing of the
20 community-integrated living arrangement:

21 (1) the disclosure statement required under subsection
22 (b) to be delivered to the persons with whom the contract
23 for a community-integrated living arrangement is to be
24 entered;

25 (2) the contracts for a community-integrated living
26 arrangement to be entered into by the provider under

1 subsection (c) with a person who will occupy a living unit
2 in a community-integrated living arrangement; and

3 (3) any available advertising or promotional material
4 to be used in conjunction with such marketing effort.

5 A provider shall forward a copy of any changes in the
6 information required to be provided within 30 days after the
7 provider's utilization of such changed materials with
8 prospective residents or residents of the community-integrated
9 living arrangement. A provider intending to market or develop
10 additional units of a community-integrated living arrangement
11 who has filed such information with the Department pursuant to
12 a previous marketing effort on the same units shall not be
13 required to refile unless there has been a change in the
14 information submitted. The Department shall make such
15 information available to the public in a manner which shall
16 allow residents and prospective residents to make informed
17 choices regarding the selection of a provider, packages of
18 services and coverage, and care alternatives.

19 Such provider shall forward a copy of the building permit
20 for such community-integrated living arrangement to the
21 Department within 30 days after its issuance by the city or
22 town wherein such community-integrated living arrangement
23 shall be located.

24 (e) A provider providing continuing care at a
25 community-integrated living arrangement on the effective date
26 of this amendatory Act of the 100th General Assembly under a

1 contract which would require prepayment for some or all of the
2 covered services shall, within 30 days after such effective
3 date, forward a copy of the following information to the
4 Department:

5 (1) the disclosure statement required under subsection
6 (b) to be delivered to the persons with whom the contract
7 for continuing care at a community-integrated living
8 arrangement shall be entered;

9 (2) the contract for continuing care at a
10 community-integrated living arrangement to be entered into
11 by the provider under subsection (c) with a person who will
12 occupy a living unit in any such community-integrated
13 living arrangement;

14 (3) any available advertising or promotional material
15 to be used in conjunction with such marketing effort; and

16 (4) a copy of the building permit for the
17 community-integrated living arrangement.

18 A provider shall forward a copy of any changes in the
19 information required to be provided within 30 days after the
20 provider's utilization of such materials with prospective
21 residents or residents of the community-integrated living
22 arrangement. A provider intending to market or develop
23 additional units of a community-integrated living arrangement
24 who has filed such information with the Department pursuant to
25 a previous marketing effort on the same units shall not be
26 required to refile unless there has been a change in the

1 information submitted. The Department shall make such
2 information available to the public in a manner which shall
3 allow residents and prospective residents to make informed
4 choices regarding the selection of a provider, packages of
5 services and coverage, and care alternatives.

6 (f) Residents may:

7 (1) establish a residents association and elect the
8 officers of the residents association;

9 (2) receive, upon request, a current copy of the
10 community-integrated living arrangement's disclosure
11 statement as described in subsection (b), and providers
12 shall, upon request, make a reasonable effort to explain
13 the terms and information contained within the disclosure
14 document; provided, however, that nothing in this
15 paragraph shall be construed to modify the contractual
16 rights of residents or providers and providers may make
17 reasonable provisions for the form and manner in which such
18 requests shall be submitted;

19 (3) submit comments to providers on matters that may
20 affect the health and welfare of residents and affecting
21 the future of the community-integrated living arrangement,
22 including, but not limited to, the community-integrated
23 living arrangement's size and ownership and the provider's
24 financial health; provided, that providers may make
25 reasonable provisions for the form and manner in which such
26 comments shall be submitted; and provided further, that, to

1 the maximum extent feasible, providers shall seek comment
2 from residents when designing or adopting policies that
3 significantly affect the future of the
4 community-integrated living arrangement;

5 (4) receive, upon request, information regarding any
6 major construction, modification, expansion or renovation
7 of the community-integrated living arrangement, including
8 information on cost estimates, funding, financing,
9 projected income, schedule and impacts on the existing
10 community-integrated living arrangement; provided, that
11 providers may make reasonable provisions for the form and
12 manner in which such requests shall be submitted; and

13 (5) receive, upon request, information regarding the
14 purpose and intended funding of all financial reserves kept
15 by the provider; provided, that providers may make
16 reasonable provisions for the form and manner in which such
17 requests may be submitted.

18 (g) Providers shall, to the maximum extent practicable:

19 (1) offer a reasonable explanation of any adjustments
20 in monthly fees and other major fees paid by residents;

21 (2) inform residents of matters that may affect the
22 health and welfare of residents and affecting the future of
23 the community-integrated living arrangement, including,
24 but not limited to, the community-integrated living
25 arrangement's size and ownership and the provider's
26 financial health; provided, that on such matters,

1 providers shall facilitate communications between
2 residents and management and between residents and boards
3 or owners, which may include residents' representation on
4 the provider's managing body, but need not depend solely on
5 board representation; and

6 (3) make use of applicable standards and practices to
7 maintain and project each community-integrated living
8 arrangement's operational and financial viability and,
9 upon request, give that information regarding such
10 standards and practices used by providers to the residents;
11 provided, that providers may make reasonable provisions
12 for the form and manner in which such requests shall be
13 submitted.

14 (h) Notwithstanding the remedy set forth in subsection (c),
15 a violation of this Section by a provider of a
16 community-integrated living arrangement shall constitute a
17 deceptive trade practice under the Uniform Deceptive Trade
18 Practices Act.

19 Section 10. The Uniform Deceptive Trade Practices Act is
20 amended by changing Section 2 as follows:

21 (815 ILCS 510/2) (from Ch. 121 1/2, par. 312)

22 Sec. 2. Deceptive trade practices.

23 (a) A person engages in a deceptive trade practice when, in
24 the course of his or her business, vocation, or occupation, the

1 person:

2 (1) passes off goods or services as those of another;

3 (2) causes likelihood of confusion or of
4 misunderstanding as to the source, sponsorship, approval,
5 or certification of goods or services;

6 (3) causes likelihood of confusion or of
7 misunderstanding as to affiliation, connection, or
8 association with or certification by another;

9 (4) uses deceptive representations or designations of
10 geographic origin in connection with goods or services;

11 (5) represents that goods or services have
12 sponsorship, approval, characteristics, ingredients, uses,
13 benefits, or quantities that they do not have or that a
14 person has a sponsorship, approval, status, affiliation,
15 or connection that he or she does not have;

16 (6) represents that goods are original or new if they
17 are deteriorated, altered, reconditioned, reclaimed, used,
18 or secondhand;

19 (7) represents that goods or services are of a
20 particular standard, quality, or grade or that goods are a
21 particular style or model, if they are of another;

22 (8) disparages the goods, services, or business of
23 another by false or misleading representation of fact;

24 (9) advertises goods or services with intent not to
25 sell them as advertised;

26 (10) advertises goods or services with intent not to

1 supply reasonably expectable public demand, unless the
2 advertisement discloses a limitation of quantity;

3 (11) makes false or misleading statements of fact
4 concerning the reasons for, existence of, or amounts of
5 price reductions;

6 (11.1) is a provider of a community-integrated living
7 arrangement and violates Section 14.5 of the
8 Community-Integrated Living Arrangements Licensure and
9 Certification Act; or

10 (12) engages in any other conduct which similarly
11 creates a likelihood of confusion or misunderstanding.

12 (b) In order to prevail in an action under this Act, a
13 plaintiff need not prove competition between the parties or
14 actual confusion or misunderstanding.

15 (c) This Section does not affect unfair trade practices
16 otherwise actionable at common law or under other statutes of
17 this State.

18 (Source: P.A. 92-16, eff. 6-28-01)