

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 170

Short Title: Continuing Care Retirement Communities Act.-AB (Public)

Sponsors: Representatives Setzer and Humphrey (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Health, if favorable, Insurance, if favorable, Rules, Calendar, and Operations of the House

February 23, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE CONTINUING CARE RETIREMENT COMMUNITIES ACT, AS
3 RECOMMENDED BY THE DEPARTMENT OF INSURANCE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 64 of Chapter 58 of the General Statutes is repealed.

6 **SECTION 2.** Chapter 58 of the General Statutes is amended by adding a new Article
7 to read:

8 "Article 64A.

9 "Continuing Care Retirement Communities.

10 "Part 1. General Provisions.

11 **"§ 58-64A-1. Title.**

12 This Article shall be known and may be cited as the "Continuing Care Retirement
13 Communities Act."

14 **"§ 58-64A-2. Legislative intent.**

15 The General Assembly recognizes that continuing care retirement community residents often
16 expend a significant portion of their savings when contracting with a provider for continuing care
17 and devastating consequences can result if a provider becomes insolvent or unable to provide
18 continuing care. It is the intent of the General Assembly to promote the dignity and protect the
19 health, safety, and welfare of older citizens of North Carolina by (i) encouraging the development
20 of continuing care retirement communities and (ii) requiring providers offering or providing
21 continuing care in this State to obtain a license and to be monitored and regulated by the North
22 Carolina Department of Insurance under this Article. This Article applies to both for-profit and
23 nonprofit providers.

24 **"§ 58-64A-5. Definitions.**

25 As used in this Article, unless the context requires otherwise, the following definitions shall
26 apply to the defined words and phrases and their cognates:

27 (1) Accepted actuarial standards of practice. – Standards of practice that conform
28 with Actuarial Standards of Practice No. 3 for Continuing Care Retirement
29 Communities, Revised Edition, effective June 1, 2022, including subsequent
30 amendments and editions.

31 (2) Actuarial opinion. – An opinion issued by an actuary in accordance with
32 accepted actuarial standards of practice.



- 1 (3) Actuarial study. – An analysis that includes an actuary's opinion of whether
2 the provider or applicant is in satisfactory actuarial balance in accordance with
3 accepted actuarial standards of practice.
- 4 (4) Actuary. – An individual qualified to sign an actuarial opinion in accordance
5 with the American Academy of Actuaries' qualification standards and who is
6 a member in good standing of the American Academy of Actuaries.
- 7 (5) Advertisement. – Any written, visual, or electronic information provided to
8 potential residents, or their representatives, to induce those persons to
9 subscribe to or enter into a non-binding reservation agreement, binding
10 reservation agreement, continuing care contract, or continuing care without
11 lodging contract.
- 12 (6) Affiliate. – A person that, directly or indirectly, through one or more other
13 persons, controls, is controlled by, or is under common control with a provider
14 or applicant.
- 15 (7) Affiliation. – Close connection to or association with another person other
16 than an affiliate or related party.
- 17 (8) Annual debt service. – The current year's interest expense plus scheduled
18 principal payments, excluding any balloon principal payment amounts and
19 any portion of the annual debt service that has been or will be funded by debt
20 for the payment of debt service.
- 21 (9) Applicant. – Any person with a pending application or other request for
22 approval under this Article.
- 23 (10) Assisted living care. – Care provided in an assisted living residence as defined
24 in G.S. 131D-2.1.
- 25 (11) Audited financial statement. – Financial statements prepared in accordance
26 with Generally Accepted Accounting Principles.
- 27 (12) Average daily cash operating expenses. – The total expenses of a provider
28 incurred in the conduct of the provider's business, over the 12-month period
29 ending on the reporting date, divided by 365. For purposes of this definition,
30 "total expenses" includes interest expense but excludes depreciation,
31 amortization, realized or unrealized nonoperating losses, bad debt expenses,
32 and other noncash expenses.
- 33 (13) Binding reservation agreement. – A binding contractual agreement between a
34 provider and a depositor that requires the payment of a deposit to reserve the
35 right to purchase continuing care, including the right to live in an independent
36 living unit at a continuing care retirement community. A purchase and sale
37 agreement for an independent living unit shall not be considered a binding
38 reservation agreement for the purposes of this Article.
- 39 (14) Cancel. – To terminate the force and effect of an agreement or contract.
- 40 (15) Continuing care. – The rendering to an individual other than an individual
41 related by blood, marriage, or adoption to the person rendering the care, of
42 housing in an independent living unit, together with related services, including
43 access, when needed, to progressive levels of health care, including either
44 assisted living care or nursing care, or both, regardless of whether the health
45 care is provided at the continuing care retirement community where the
46 individual resides or another location or through a contractual relationship
47 with a third party, pursuant to a contract effective for the life of the individual
48 or for a period longer than one year.
- 49 (16) Continuing care retirement community. – A retirement community consisting
50 of one or more structures where a provider renders or will render some or all
51 services promised in a continuing care or continuing care without lodging

1 contract, whether or not the structures and land that make up the community
2 are constructed, owned, leased, rented, managed, or otherwise contracted for
3 by the provider. A continuing care retirement community may include one or
4 more structures on a primary or contiguous site or an immediately accessible
5 site. Continuing care retirement community does not include a person's
6 personal residence if the residence is not a living unit provided by the
7 provider. A distinct phase of development approved by the Commissioner
8 may be considered to be the continuing care retirement community when a
9 project is being developed in successive distinct phases over a period of time.
10 The terms "continuing care retirement community" and "life plan community"
11 are synonymous.

12 (17) Continuing care without lodging. – A program offered by a provider holding
13 a permanent license under this Article that provides continuing care to an
14 individual who is not yet receiving housing, including programs that offer an
15 individual an opportunity to move to an independent living unit at a future
16 date, if desired, according to the provider's established priority and admissions
17 policies at the continuing care retirement community sponsoring the
18 continuing care without lodging program.

19 (18) Control. – The direct or indirect ability to direct or cause the direction of the
20 management and policies of a person.

21 (19) Days cash on hand ratio. – The quotient obtained by dividing unrestricted cash
22 and investments by average daily cash operating expenses.

23 (20) Debt service coverage ratio. – The quotient obtained by dividing the sum of
24 total excess of revenues over or under expenses plus interest expense,
25 depreciation and amortization expenses, other noncash operating losses, and
26 net cash proceeds from entrance fees, minus entrance fee amortization and
27 other noncash operating gains divided by annual debt service. Entrance fees
28 received from the initial residents of independent living units at a continuing
29 care retirement community that have been financed in whole or in part with
30 the proceeds of indebtedness shall be excluded from the net proceeds from
31 entrance fees up to an amount equal to the aggregate of the principal amount
32 of the indebtedness.

33 (21) Deposit. – Any transfer of consideration made by a depositor to a provider to
34 reserve an independent living unit at a continuing care retirement community
35 or proposed continuing care retirement community.

36 (22) Depositor. – Any person who pays a deposit.

37 (23) Entrance fee. – The sum of any initial, amortized, or deferred transfer of
38 consideration made or promised to be made by, or on behalf of, an individual
39 entering into a continuing care or continuing care without lodging contract.

40 (24) Escrow agent. – Any person, including a bank, approved by the Commissioner
41 to hold entrance fees and deposits required to be placed in escrow under this
42 Article.

43 (25) Escrow agreement. – An agreement between a provider and an escrow agent
44 by which entrance fees and deposits are held by the escrow agent until release
45 is permitted in accordance with this Article.

46 (26) Expansion. – Increasing the number of living units at an existing continuing
47 care retirement community.

48 (27) Generally Accepted Accounting Principles. – The accounting principles or
49 standards generally accepted in the United States, including the accounting
50 standards codification and interpretations of those standards published by the
51 Financial Accounting Standards Board.

- 1 (28) Hazardous condition. – A present, or reasonably anticipated future condition,
2 whereby (i) a provider is unlikely to be able to meet its continuing care
3 obligations or to pay other obligations in the normal course of business or (ii)
4 the continued operation of a provider or continuing care retirement
5 community in its current condition is potentially harmful to depositors,
6 residents, creditors, or the general public.
- 7 (29) Home care services. – As defined in G.S. 131E-136.
- 8 (30) Housing. – A living unit set forth in a continuing care contract. The terms
9 "housing" and "lodging" are synonymous.
- 10 (31) Immediately accessible site. – A parcel of land separated by no more than a
11 reasonable distance, as determined by the Commissioner, from the primary
12 location of the continuing care retirement community as measured along
13 public thoroughfares.
- 14 (32) Impairment. – A weakened financial state or condition that may affect a
15 provider's ability to pay its obligations as they come due in the normal course
16 of business.
- 17 (33) Independent living unit. – A living unit in a continuing care retirement
18 community for residents who are routinely able to carry out activities of daily
19 living, as defined in G.S. 160D-915, with minimal or no assistance; the
20 accommodations may be in the form of apartments, flats, houses, cottages,
21 condominium units, or rooms. Receiving home care or similar services,
22 regardless of whether the services are provided by the provider or another
23 person, does not preclude a living unit from being considered an independent
24 living unit.
- 25 (34) Insolvent. – A condition whereby the provider is unable to pay its obligations
26 as they come due in the normal course of business.
- 27 (35) Life plan community. – The terms "continuing care retirement community"
28 and "life plan community" are synonymous.
- 29 (36) Living unit. – An independent living unit, adult care home bed, nursing bed,
30 or other area within a continuing care retirement community set aside for the
31 exclusive use or control of one or more identified residents.
- 32 (37) Living unit days available. – The maximum number of living unit days that
33 would have been provided if all available living units were filled during the
34 given time period. The total shall equal the sum of all living units, minus any
35 living units that are unavailable for occupancy, on each day for the given time
36 period.
- 37 (38) Lodging. – The terms "housing" and "lodging" are synonymous.
- 38 (39) Long-term care facility. – As defined in G.S. 131E-231.
- 39 (40) Manager. – A person who administers the day-to-day business operations of
40 a continuing care retirement community for a provider, subject to the policies,
41 directives, and oversight of the provider.
- 42 (41) Net operating margin ratio. – The quotient obtained by dividing total operating
43 revenues, excluding interest and dividend income, entrance fee amortization,
44 and contributions by total operating expenses, excluding interest expense,
45 depreciation and amortization expenses, and income taxes.
- 46 (42) Non-binding reservation agreement. – An agreement between a provider and
47 a depositor, which may be canceled by either party upon written notice at any
48 time, confirming a person's desire to reserve an independent living unit at a
49 continuing care retirement community on a non-binding basis.
- 50 (43) Nursing care. – As defined in G.S. 131E-176.

- 1 (44) Obligated group. – One or more persons that jointly agree to be bound by a
2 financing structure containing security provisions and covenants applicable to
3 the group.
- 4 (45) Occupancy rate. – A ratio used to show the actual occupancy or utilization of
5 living units, calculated by living unit type, at a continuing care retirement
6 community for a given time period expressed as a percent. The occupancy rate
7 shall be a rolling average that is equal to 100 times the quotient obtained by
8 dividing occupied living unit days by living unit days available.
- 9 (46) Occupied living unit days. – The sum of each daily living unit census at the
10 continuing care retirement community for a given time period, excluding any
11 second person occupants. The total shall equal the sum of each daily census
12 for the given time period.
- 13 (47) Operating ratio. – The quotient obtained by dividing total operating expenses,
14 excluding depreciation and amortization expenses by total operating revenues,
15 excluding amortization of entrance fees and other deferred revenue.
- 16 (48) Periodic fee. – The fee charged to a resident on a monthly or other periodic
17 basis for housing, services, or both.
- 18 (49) Person. – An individual, partnership, firm, association, corporation,
19 joint-stock company, trust, any similar entity, or any combination of the
20 foregoing acting in concert.
- 21 (50) Presale. – Entering into an agreement or contract with a depositor for an
22 independent living unit that is not yet constructed or available for occupancy.
- 23 (51) Primary market area. – The area from which a continuing care retirement
24 community will likely draw the majority of its residents.
- 25 (52) Processing fee. – A payment made to a provider to cover administrative costs
26 of processing the application of a depositor or a prospective resident.
- 27 (53) Prospective financial statements. – Financial forecasts or financial
28 projections, including the summaries of significant assumptions and
29 accounting policies prepared by an independent certified public accountant.
- 30 (54) Provider. – A person that offers or undertakes to provide continuing care under
31 a continuing care or continuing care without lodging contract, or that
32 represents himself, herself, or itself as providing continuing care.
- 33 (55) Related party. – A person or persons that have common interests with a
34 provider as a result of ownership, control, or by contract, including affiliates,
35 principal owners, management, or their affiliates and their management and
36 members of the immediate family of the principal owners, management, or
37 their affiliates and their management.
- 38 (56) Renovation. – A material capital improvement to, or replacement of, all or
39 part of an existing continuing care retirement community.
- 40 (57) Resale fee. – A contractual assessment by the provider against the proceeds
41 from the sale of an independent living unit.
- 42 (58) Resident. – An individual who enters into a continuing care or continuing care
43 without lodging contract with a provider, or who is designated in a continuing
44 care or continuing care without lodging contract to be the individual being
45 provided or to be provided continuing care.
- 46 (59) Residents' council. – A group duly elected by residents at a continuing care
47 retirement community to advocate for residents' rights and to serve as a liaison
48 between residents and the provider with respect to resident welfare and
49 interests.
- 50 (60) Restriction. – A limitation, specific action, or other requirement imposed by
51 the Commissioner for the initial or continuing validity of a permit to accept

1 deposits, a start-up certificate, a preliminary certificate, or a permanent
2 license. A restriction may limit the circumstances under which the provider
3 may enter into any new non-binding reservation agreement, binding
4 reservation agreement, continuing care contract, or continuing care without
5 lodging contract, or may be imposed as a restriction precedent to the issuance
6 of a permit to accept deposits, a start-up certificate, a preliminary certificate,
7 or a permanent license.

8 (61) Satisfactory actuarial balance. – Meeting all of the required conditions, as of
9 a specified valuation date, as set forth in accordance with accepted actuarial
10 standard of practice.

11 (62) Unrestricted cash and investments. – The sum of the provider's unrestricted
12 cash, cash equivalents and investments, any provider restricted funds that are
13 available to pay debt or to pay operating expenses, any unrestricted cash, cash
14 equivalents, and investments of foundations set up solely for the benefit of the
15 provider, and the operating reserve required by G.S. 58-64A-255 as of the
16 reporting date.

17 (63) Unrestricted cash and investments to long-term debt ratio. – The quotient
18 obtained by dividing unrestricted cash and investments by total long-term
19 debt, less current portion.

20 **"§ 58-64A-10. Rulemaking authority.**

21 The Commissioner may adopt rules to implement the provisions of this Article.

22 **"§ 58-64A-15. Dividends and distributions.**

23 No dividend or other distribution of equity or net assets shall be paid by any provider after
24 the Commissioner has determined that the provider is in a hazardous condition or has been
25 determined to not be in satisfactory actuarial balance in an actuarial study filed with the
26 Commissioner pursuant to G.S. 58-64A-230, or when the payment would have the effect of
27 creating a hazardous condition in the provider or cause the provider to not be in satisfactory
28 actuarial balance.

29 **"§ 58-64A-20. Commissioner approval requirement.**

30 No person shall engage in the business of offering or providing continuing care in this State
31 without a certification, license, permit, or other approval from the Commissioner as provided in
32 this Article. Engaging in the business of offering or providing continuing care in this State
33 includes all of the following:

34 (1) Accepting any deposit or any other payment that is related to continuing care.

35 (2) Entering into any non-binding reservation agreement, binding reservation
36 agreement, continuing care contract, or continuing care without lodging
37 contract.

38 (3) Commencing construction of a prospective continuing care retirement
39 community.

40 (4) Converting an existing building or buildings to a continuing care retirement
41 community.

42 (5) Executing new non-binding reservation agreements, binding reservation
43 agreements, continuing care contracts, or continuing care without lodging
44 contracts after a permit, certificate, or license issued pursuant to this Article
45 has been inactivated, surrendered, or forfeited.

46 (6) Assuming responsibility for continuing care and continuing care without
47 lodging contracts.

48 (7) Expanding the number of independent living units at a continuing care
49 retirement community in an amount equal to or in excess of twenty percent
50 (20%) of existing independent living units.

- 1 (8) Advertising or marketing to the general public any product similar to
2 continuing care through the use of terms as "life care," "life plan," "continuing
3 care," or "guaranteed care for life," or similar terms, words, or phrases.

4 **"§ 58-64A-25. Leasing real property for a continuing care retirement community.**

5 (a) A provider who intends to collect or does collect entrance fees shall not lease any land
6 or other real property from another person if the land or other real property is to be used as a
7 material part of a continuing care retirement community operated by the provider without first
8 obtaining Commissioner approval.

9 (b) When considering whether to allow an applicant or provider to lease any of the real
10 property of a continuing care retirement community under this section, the Commissioner shall
11 consider all relevant factors, including all of the following:

- 12 (1) The terms of the proposed lease, including the proposed length of the lease
13 and any proposed purchase options.
14 (2) The owner of the real property and the owners' relationship to the provider.
15 (3) The distance from any existing real property owned by the provider.

16 **"§ 58-64A-30. Required electronic filings and submissions.**

17 Except when required by the Commissioner to submit a hard copy, all applicants and
18 providers shall submit all filings required by this Article electronically in a form and manner
19 acceptable to the Commissioner and in compliance with the Uniform Electronic Transactions
20 Act.

21 **"§ 58-64A-35. Waiver or modification.**

22 (a) The Commissioner may waive or modify any provision of this Article if the
23 Commissioner determines waiver or modification is justified based on any of the following
24 reasons:

- 25 (1) A state of emergency or disaster being proclaimed in this State or for an area
26 within this State under G.S. 166A-19.20 or G.S. 166A-19.21 or whenever the
27 President of the United States has issued a major disaster declaration for the
28 State or for an area within the State under the Stafford Act, 42 U.S.C. § 5121,
29 et seq.
30 (2) An incident beyond a provider's reasonable control, including an act of God,
31 insurrection, strike, fire, pandemic, epidemic, power outage, or systemic
32 technological failure that substantially affects the daily business operations of
33 a provider or a continuing care retirement community.
34 (3) Sound actuarial, accounting, business principles, or other reasonable reason
35 that does not diminish the protections provided for under this Article.

36 (b) No waiver or modification made by the Commissioner pursuant to this section shall
37 result in a greater regulatory burden than imposed by this Article prior to the exercise of the
38 waiver or modification, unless agreed to in writing by the applicant or provider.

39 **"§ 58-64A-40. Confidential treatment.**

40 (a) All of the following shall be confidential and privileged, shall not be considered a
41 public record under either G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be
42 subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private
43 civil action:

- 44 (1) Any third-party management contract or proposed management contract
45 provided to the Commissioner pursuant to G.S. 58-64A-55(a)(3) or
46 G.S. 58-64A-240(a), and any statement filed with the Commissioner pursuant
47 to G.S. 58-64A-240(a) regarding any significant disagreements with a former
48 manager.
49 (2) Any lease agreement or proposed lease agreement provided to the
50 Commissioner pursuant to G.S. 58-64A-25 or G.S. 58-64A-55(a)(4).

- 1 (3) The written notice provided to the Commissioner pursuant to
2 G.S. 58-64A-215(d).
- 3 (4) The request for approval provided to the Commissioner pursuant to
4 G.S. 58-64A-220(a).
- 5 (5) The actuarial study, other than the statement of actuarial opinion, provided to
6 the Commissioner pursuant to G.S. 58-64A-60(a)(3), 58-64A-80(b)(3),
7 58-64A-195(a)(4), or 58-64A-230.
- 8 (6) Any market study provided to the Commissioner pursuant to
9 G.S. 58-64A-55(a)(9) or G.S. 58-64A-195(a)(5).
- 10 (7) Any feasibility study provided to the Commissioner pursuant to
11 G.S. 58-64A-60(a)(2) or G.S. 58-64A-80(b)(2).
- 12 (8) Documents, materials, or other information in the possession or control of the
13 Commissioner that are obtained by or disclosed to the Commissioner or any
14 other person in the course of an examination or investigation made pursuant
15 to G.S. 58-64A-300 or G.S. 58-64A-380.
- 16 (9) All working papers, information, documents, and copies of those materials
17 produced by, obtained by, or disclosed to the Commissioner in connection
18 with the financial analysis of a provider by the Commissioner.

19 (b) Notwithstanding subsection (a) of this section, the Commissioner is authorized to use
20 these documents, materials, or other information in the furtherance of any regulatory or legal
21 action brought as a part of the Commissioner's official duties. The Commissioner shall not
22 otherwise make these documents, materials, or other information public without the prior written
23 consent of the provider to which it pertains unless the Commissioner, after giving the provider
24 and its affiliates and other related parties who would be affected thereby notice and opportunity
25 to be heard, determines that the interest of residents or the public will be served by their
26 publication, in which event the Commissioner may publish all or any part of the information in
27 a manner deemed appropriate by the Commissioner.

28 (c) Neither the Commissioner nor any person who received any documents, materials, or
29 other information while acting under the authority of the Commissioner pursuant to this Article
30 or with whom any documents, materials, or other information are shared pursuant to this Article
31 shall be permitted or required to testify in any private civil action concerning any confidential
32 documents, materials, or information subject to subsection (a) of this section.

33 (d) Any document, material, or other information that is shared with the Commissioner
34 that is not covered under subsection (a) of this section that an applicant, provider, or other person
35 believes is confidential or a trade secret shall be marked as confidential or as a trade secret before
36 submitting to the Commissioner. Any document, material, or other information that is not marked
37 as confidential is not eligible for confidential treatment pursuant to G.S. 132-1.2.

38 (e) To assist in the performance of the duties imposed by this Article, the Commissioner
39 may do both of the following:

- 40 (1) Share documents, materials, or other information, including the confidential
41 and privileged documents, materials, or information subject to subsection (a)
42 or (d) of this section, with other state, federal, and international regulatory
43 agencies, and with state, federal, and international law enforcement
44 authorities, provided that the recipient agrees in writing to maintain the
45 confidentiality and privileged status of the document, material, or other
46 information and has verified in writing the legal authority to maintain
47 confidentiality.
- 48 (2) Receive documents, materials, or information, including otherwise
49 confidential and privileged documents, materials, or information from
50 regulatory and law enforcement officials of other foreign or domestic
51 jurisdictions, and shall maintain as confidential or privileged any document,

1 material, or information received with notice or the understanding that it is
2 confidential or privileged under the laws of the jurisdiction that is the source
3 of the document, material, or information.

4 (f) The sharing of information by the Commissioner pursuant to this section shall not
5 constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely
6 responsible for the administration, execution, and enforcement of the provisions of this Article.
7 No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or
8 information shall occur as a result of disclosure to the Commissioner under this section or as a
9 result of sharing as authorized in subsection (e) of this section.

10 **"§ 58-64A-45. Advertisement in conflict with disclosures and contracts.**

11 A provider may not engage in any type of advertisement for a continuing care retirement
12 community if the advertisement contains a statement or representation which materially conflicts
13 with the disclosures required under this Article or materially conflicts with any continuing care
14 or continuing care without lodging contract offered by the provider.

15 "Part 2. Approval, Certification, Licensure, and Permitting Process.

16 **"§ 58-64A-50. Permit to accept deposits.**

17 (a) No person shall market a proposed continuing care retirement community to measure
18 its viability without a permit from the Commissioner. A person may apply for a permit by filing
19 an application on a form prescribed by the Commissioner. The application form shall include all
20 of the following:

- 21 (1) The name, business address, and telephone number of the applicant.
- 22 (2) A proposed non-binding reservation agreement.
- 23 (3) A proposed escrow agreement that meets the requirements of
24 G.S. 58-64A-120.
- 25 (4) A description of the proposed continuing care retirement community. The
26 description shall include all of the following:
 - 27 a. The location of the proposed continuing care retirement community.
 - 28 b. The types of living units to be offered.
 - 29 c. The types of continuing care contracts to be offered.
 - 30 d. A description of the services that will be provided to residents,
31 including an indication if any services will be provided by any
32 affiliates, other related parties, or third parties.
 - 33 e. A description of the applicant's corporate structure and experience in
34 developing or operating continuing care retirement communities,
35 including the experience of any affiliate of the applicant.

36 (b) The Commissioner shall comply with the following deadlines in response to an
37 application for a permit to accept deposits:

- 38 (1) Within five business days after receipt of an application or of materials
39 intended to supplement an incomplete application, the Commissioner shall
40 acknowledge receipt in writing.
- 41 (2) Within 10 business days after receipt of an application or of materials intended
42 to supplement an incomplete application, the Commissioner shall determine
43 if the application is complete and inform the applicant in writing of the
44 determination. If the Commissioner determines that the application is
45 incomplete, the notice to the applicant shall specifically set forth and request
46 any additional information the Commissioner determines is necessary to
47 complete the application.
- 48 (3) Within five business days after an application is deemed complete, the
49 Commissioner shall approve or deny the application.

50 (c) The Commissioner shall approve an application for a permit to accept deposits unless
51 the Commissioner determines that any of the following requirements are not met:

- 1 (1) The application meets all requirements of this section.
2 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
3 applicant.
4 (3) The proposed escrow agreement meets the requirements of G.S. 58-64A-120.
5 (4) The proposed escrow agent and depository are acceptable in accordance with
6 G.S. 58-64A-115.
7 (d) After the issuance of a permit to accept deposits, the applicant may do all of the
8 following:
9 (1) Disseminate materials describing the intent to develop a continuing care
10 retirement community.
11 (2) Enter into non-binding reservation agreements.
12 (3) Collect deposits in an amount not to exceed five thousand dollars (\$5,000).
13 All deposits collected shall be placed in escrow and shall only be released in
14 accordance with Part 4 of this Article.
15 (e) After the issuance of a permit to accept deposits, the Commissioner shall require the
16 provider to file periodic status reports in a form prescribed by the Commissioner.
17 **"§ 58-64A-55. Start-up certificates.**
18 (a) A person may apply for a start-up certificate by paying an application fee of two
19 thousand dollars (\$2,000) and submitting all of the following to the Commissioner for review:
20 (1) A statement signed by the applicant under penalty of perjury certifying that to
21 the best of the applicant's knowledge and belief, the items submitted in the
22 application are correct. If the applicant is a corporation, the chief executive
23 officer or other authorized individual shall sign the statement. If there are
24 multiple applicants, these requirements shall apply to each applicant. When a
25 person signs on behalf of an applicant, proof of the person's authority to sign
26 on behalf of the applicant will be required if that person does not possess
27 apparent authority to sign on behalf of the applicant. Proof may take the form
28 of a copy of a resolution or consent of the board of directors, a provision of
29 the bylaws, or a copy of a paper properly delegating authority to that person
30 to sign the application on behalf of the applicant.
31 (2) A statement disclosing any revocation or other disciplinary action taken, or in
32 the process of being taken, against a license, permit, or certificate held or
33 previously held by the applicant, any current or former affiliate, or any person
34 included or to be included in a current or proposed obligated group.
35 (3) If the applicant intends to employ a third-party management company to
36 manage the continuing care retirement community, a copy of the management
37 contract or proposed management contract, if available, along with a narrative
38 describing the proposed third-party management company's experience
39 managing continuing care retirement communities.
40 (4) If the applicant intends to lease any land or other real property to be used as
41 part or all of the proposed continuing care retirement community, the name of
42 the person from whom the land or other real property will be leased along with
43 a copy of the lease agreement, or proposed lease agreement, if available, or a
44 statement describing the applicant's intentions, including the intended length
45 of the lease, if a lease agreement or proposed lease agreement is not available.
46 If the applicant intends to lease any of the real property of the continuing care
47 retirement community and to collect entrance fees, Commissioner approval
48 must be received pursuant to G.S. 58-64A-25.
49 (5) If the applicant is not the owner of the proposed site, a statement identifying
50 the current owner and any plans the applicant has for acquiring the proposed
51 site, including details of any purchase option and requirements for a purchase

- 1 option deposit. If a purchase option requires a purchase option deposit, the
2 purchase option deposit shall be placed in escrow or secured in a manner
3 acceptable to the Commissioner.
- 4 (6) A list of all continuing care retirement communities currently or previously
5 owned, operated, managed, or developed by the applicant, or any affiliate of
6 the applicant, including any person controlling or controlled by the applicant.
7 The list shall do all of the following:
- 8 a. Furnish the name, address, city, and state of each continuing care
9 retirement community listed, and explain the existing or past
10 relationship to the applicant.
- 11 b. Specify the current status of each continuing care retirement
12 community listed and include any administrative actions or financial
13 problems that currently exist, or have existed, within three years after
14 any relationship was terminated.
- 15 (7) A disclosure statement that meets the requirements of G.S. 58-64A-160.
- 16 (8) A copy of a binding reservation agreement.
- 17 (9) A market study prepared by a person experienced in the preparation of
18 continuing care retirement community market studies and acceptable to the
19 Commissioner.
- 20 (10) Any other data, financial statements, and pertinent information as the
21 Commissioner may reasonably require with respect to the applicant or the
22 proposed continuing care retirement community to assist in determining the
23 market and financial viability of the proposed continuing care retirement
24 community and the management capabilities of its managers and owners.
- 25 (b) The Commissioner shall comply with the following deadlines in response to an
26 application for a start-up certificate:
- 27 (1) Within five business days after receipt of an application or of materials
28 intended to supplement an incomplete application, the Commissioner shall
29 acknowledge receipt in writing.
- 30 (2) Within 30 days after receipt of an application or of materials intended to
31 supplement an incomplete application, the Commissioner shall determine if
32 the application is complete and inform the applicant in writing of the
33 determination. If the Commissioner determines that the application is
34 incomplete, the notice to the applicant shall specifically set forth and request
35 any additional information the Commissioner determines is necessary to
36 complete the application.
- 37 (3) Within 30 days after an application is deemed complete, the Commissioner
38 shall approve or deny the application.
- 39 (c) The Commissioner shall approve an application for a start-up certificate unless the
40 Commissioner determines that any of the following requirements are not met:
- 41 (1) The application meets all requirements of this section.
- 42 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
43 applicant.
- 44 (3) The disclosure statement meets the requirements of G.S. 58-64A-160.
- 45 (4) A market for the proposed continuing care retirement community appears to
46 exist and the continuing care retirement community appears to be financially
47 viable.
- 48 (5) The competence, experience, and integrity of the applicant, its governing
49 body, officers, management, and owners are sufficient.
- 50 (d) After issuing a start-up certificate, the Commissioner shall do all of the following:

- 1 (1) Require the provider to submit periodic sales, development, and financial
2 reports in a form prescribed by the Commissioner.
3 (2) Post the disclosure statement of the continuing care retirement community on
4 the Department's website.
5 (e) After receiving a start-up certificate from the Commissioner, the applicant may do all
6 of the following:
7 (1) Enter into binding reservation agreements and continuing care contracts.
8 (2) Accept entrance fees and deposits greater than five thousand dollars (\$5,000).
9 All or any part of an entrance fee or deposit collected shall be placed in escrow
10 and shall only be released in accordance with Part 4 of this Article.
11 (3) Begin site preparation work.
12 (4) Construct model independent living units for marketing.

13 **"§ 58-64A-60. Preliminary certificate.**

- 14 (a) A person may apply for a preliminary certificate by submitting all of the following to
15 the Commissioner for review:
16 (1) A statement signed by the applicant that meets the requirements of
17 G.S. 58-64A-55(a)(1).
18 (2) A feasibility study, prepared by an independent person experienced in
19 preparing feasibility studies for continuing care retirement communities and
20 acceptable to the Commissioner, with appropriate financial, marketing, and
21 actuarial assumptions that reasonably projects the market and financial
22 viability of the proposed continuing care retirement community. The study
23 shall include all of the following items:
24 a. A description of the proposed continuing care retirement community,
25 its service package, the number and type of living units, fee structure,
26 and anticipated opening date, including a detailed schedule of
27 projected periodic fees and a description of how the projected periodic
28 fees were computed.
29 b. A description of any proposed construction plans, construction
30 financing, and permanent financing for the proposed continuing care
31 retirement community, including a description of the anticipated
32 source, cost, terms, and uses of all funds to be used in the real property
33 acquisition, construction, marketing, and operation of the proposed
34 continuing care retirement community, including all of the following:
35 1. A description of all debt to be incurred by the applicant,
36 including the source, anticipated terms, and costs of financing.
37 2. A description of the source and amount of equity to be
38 contributed by the applicant.
39 3. A description of the source and amount of all other funds,
40 including entrance fees, that will be necessary to complete and
41 operate the proposed continuing care retirement community.
42 4. A statement itemizing all estimated project costs, including the
43 real property costs, the cost of acquiring or designing and
44 constructing the proposed continuing care retirement
45 community, and all similar costs that the applicant expects to
46 incur prior to the commencement of operation. This
47 itemization shall identify all costs related to the proposed
48 continuing care retirement community, including financing
49 expenses, resident acquisition costs, marketing costs, and
50 furniture and equipment.

- 1 i. The name of the person who prepared the feasibility study and the
2 experience of the person in preparing similar studies or otherwise
3 consulting in the field of continuing care.
- 4 j. An evaluation and opinion by the person who prepared the feasibility
5 study of the underlying assumptions used as a basis for the study,
6 including a statement on whether the assumptions are reasonable and
7 proper.
- 8 (3) An actuarial study prepared in accordance with accepted actuarial standards
9 of practice which estimates the earliest year that the proposed continuing care
10 retirement community is projected to be in satisfactory actuarial balance.
11 Applicants who do not or will not collect entrance fees or some other
12 prepayment of costs are exempt from this requirement and shall only be
13 required to submit an actuarial projection of future population flows and adult
14 care home bed and nursing bed needs. An actuarial projection of future
15 population flows and adult home care bed and nursing bed needs shall use (i)
16 appropriate mortality, morbidity, withdrawal, occupancy, and other
17 demographic assumptions and (ii) a projection period that extends to a point
18 at which, in the actuary's professional judgment, the use of a longer period
19 would not materially affect the results and conclusions.
- 20 (4) An updated disclosure statement that meets the requirements of
21 G.S. 58-64A-160.
- 22 (5) One of the following:
- 23 a. Confirmation of signed binding reservation agreements or continuing
24 care contracts for at least fifty percent (50%) of the new independent
25 living units, reserved by a deposit equal to at least ten percent (10%)
26 of the entrance fee.
- 27 b. Confirmation of signed binding reservation agreements or continuing
28 care contracts for at least fifty percent (50%) of the new independent
29 living units, reserved by a nonrefundable deposit equal to the periodic
30 fee for at least two months for proposed continuing care retirement
31 communities that have no entrance fee.
- 32 c. Confirmation of one hundred thousand dollars (\$100,000) placed on
33 deposit with the Commissioner, if the applicant (i) does not collect
34 presale entrance fees or deposits in an amount equal to at least ten
35 percent (10%) of the entrance fee, or (ii) does not collect presale
36 entrance fees or deposits and does not collect nonrefundable deposits
37 equal to the periodic fee of at least two months. This deposit is subject
38 to the following requirements:
- 39 1. The deposit shall only be returned to the applicant upon the
40 issuance of a permanent license.
- 41 2. The deposit shall be made in accordance with G.S. 58-5-20.
- 42 3. The deposit shall automatically be forfeited if the applicant
43 does not obtain a permanent license within five years after the
44 issuance of a preliminary certificate. Forfeited deposits shall
45 be remitted to the Civil Penalty and Forfeiture Fund in
46 accordance with G.S. 115C-457.2.
- 47 (6) If applicable, confirmation that commitments have been secured for
48 construction financing and long-term financing or that a documented plan
49 acceptable to the Commissioner has been adopted by the applicant for
50 long-term financing.

- 1 (b) The Commissioner shall comply with the following deadlines in response to an
2 application for a preliminary certificate:
- 3 (1) Within five business days after receipt of an application or of materials
4 intended to supplement an incomplete application, the Commissioner shall
5 acknowledge receipt in writing.
- 6 (2) Within 30 days after receipt of an application or of materials intended to
7 supplement an incomplete application, the Commissioner shall determine if
8 the application is complete and inform the applicant in writing of the
9 determination. If the Commissioner determines that the application is
10 incomplete, the notice to the applicant shall specifically set forth and request
11 any additional information the Commissioner determines is necessary to
12 complete the application.
- 13 (3) Within 45 days after an application is deemed complete, the Commissioner
14 shall approve or deny the application.
- 15 (c) The Commissioner shall approve an application for a preliminary certificate unless
16 the Commissioner determines that any of the following requirements are not met:
- 17 (1) The application meets all requirements of this section.
- 18 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
19 applicant.
- 20 (3) The feasibility study meets all of the following requirements:
- 21 a. Includes in the prospective financial statements all obligations and
22 liabilities to be undertaken by the applicant pursuant to the terms of
23 the proposed continuing care contracts.
- 24 b. Demonstrates that the anticipated sources of funds to finance and
25 operate the proposed continuing care retirement community are equal
26 to or greater than the anticipated uses of funds to (i) construct or
27 acquire the proposed continuing care retirement community and (ii)
28 fund start-up losses and provide sufficient resources to ensure full
29 performance of the applicant's continuing care contract obligations.
- 30 c. Demonstrates that the continuing care retirement community is
31 financially feasible.
- 32 (4) A market for the continuing care retirement community appears to exist, based
33 on data that meets all of the following requirements:
- 34 a. Is specific to the proposed continuing care retirement community.
- 35 b. Considers existing and proposed competition in the primary market
36 area.
- 37 c. Demonstrates the existence of a market for the age, marital status,
38 number, population trends, net worth, home values, and income of the
39 potential residents.
- 40 d. Demonstrates that the rate of penetration in the proposed market area
41 is within acceptable industry ranges.
- 42 (5) The actuarial study, if applicable, projects that the proposed continuing care
43 retirement community will be in satisfactory actuarial balance within a
44 reasonable period of time after achieving stabilized occupancy, or if no
45 actuarial study is required, the actuarial projection of future population flows
46 demonstrates a sufficient number of adult care home beds and nursing beds to
47 meet the future needs of residents and the future contractual obligations of the
48 applicant.
- 49 (6) The applicant has met one of the requirements in subdivision (5) of subsection
50 (a) of this section.

1 (7) If applicable, the applicant has secured commitments for construction
2 financing and long-term financing or that a documented plan acceptable to the
3 Commissioner has been adopted by the applicant for long-term financing.

4 (8) The applicant demonstrates an ability to comply with this Article and to
5 provide continuing care as proposed and meet all financial obligations related
6 to its operations.

7 (d) After issuing a preliminary certificate, the Commissioner shall do both of the
8 following:

9 (1) Require the provider to submit periodic sales, development, and financial
10 reports in a form prescribed by the Commissioner.

11 (2) Post the disclosure statement of the continuing care retirement community on
12 the Department's website.

13 (e) After receiving a preliminary certificate from the Commissioner, the applicant may
14 do both of the following:

15 (1) Construct a continuing care retirement community.

16 (2) Convert an existing structure or structures into a continuing care retirement
17 community.

18 **"§ 58-64A-65. Permanent license.**

19 (a) A person may apply for a permanent license by submitting all of the following to the
20 Commissioner for review:

21 (1) A statement signed by the applicant that meets the requirements of
22 G.S. 58-64A-55(a)(1).

23 (2) An updated disclosure statement that meets the requirements of
24 G.S. 58-64A-160.

25 (3) Confirmation that the applicant has established a plan to have health care
26 available to residents promised in continuing care contracts upon opening,
27 either by the applicant directly, or through contractual agreements.

28 (4) Confirmation that the applicant has signed binding reservation agreements or
29 continuing care contracts of at least seventy percent (70%) of the new
30 independent living units, reserved by a deposit equal to at least ten percent
31 (10%) of the entrance fee or by a nonrefundable deposit equal to the periodic
32 fee of at least two months for proposed continuing care retirement
33 communities that have no entrance fee, unless a lesser amount is permitted by
34 the Commissioner.

35 (5) Confirmation that the applicant has long-term financing in place, and if the
36 applicant is leasing the land or other real property of the continuing care
37 retirement community, confirmation that the lease is in place and, if
38 applicable, that the lease has been approved by the Commissioner pursuant to
39 G.S. 58-64A-25.

40 (6) Confirmation that the applicant is in compliance with all other state, federal,
41 municipal, and county laws and regulations. If the applicant is not in
42 compliance, the applicant shall include a statement that describes the nature
43 of the deficiency.

44 (7) A statement concerning any litigation, orders, judgments, or decrees which
45 might affect the applicant or proposed continuing care retirement community.

46 (8) Evidence that the applicant has in place the operating reserve required by Part
47 9 of this Article.

48 (b) The Commissioner shall comply with the following deadlines in response to an
49 application for a permanent license:

- 1 (1) Within five business days after receipt of an application or of materials
2 intended to supplement an incomplete application, the Commissioner shall
3 acknowledge receipt in writing.
- 4 (2) Within 10 days after receipt of an application or of materials intended to
5 supplement an incomplete application, the Commissioner shall determine if
6 the application is complete and inform the applicant in writing of the
7 determination. If the Commissioner determines that the application is
8 incomplete, the notice to the applicant shall specifically set forth and request
9 any additional information the Commissioner determines is necessary to
10 complete the application.
- 11 (3) Within 30 days after an application is deemed complete, the Commissioner
12 shall approve or deny the application.
- 13 (c) The Commissioner shall approve an application for a permanent license if the
14 Commissioner determines that all of the following requirements are met:
- 15 (1) The application meets all requirements of this section.
16 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
17 applicant.
- 18 (d) If the Commissioner determines that the requirements of subsection (c) of this section
19 are not met, the Commissioner may do either of the following:
- 20 (1) Deny the application.
21 (2) Issue a restricted permanent license. The issuance of a restricted permanent
22 license shall be accompanied by an explanation of (i) the restrictions
23 established by the Commissioner under subsection (g) of this section and (ii)
24 the conditions the provider must satisfy to qualify for a permanent license.
- 25 (e) After issuing a permanent license or restricted permanent license, the Commissioner
26 shall do both of the following:
- 27 (1) Require the provider to submit periodic occupancy and financial statements
28 in a form prescribed by the Commissioner.
29 (2) Post the disclosure statement of the continuing care retirement community on
30 the Department's website.
- 31 (f) After receiving a permanent license from the Commissioner, the applicant may do
32 both of the following:
- 33 (1) Open the continuing care retirement community.
34 (2) Provide continuing care.
- 35 (g) After receiving a restricted permanent license from the Commissioner, the applicant
36 may operate a continuing care retirement community under restrictions established by the
37 Commissioner until the Commissioner issues a permanent license. When the Commissioner
38 issues a restricted permanent license, the provider shall inform all depositors and residents within
39 10 business days of (i) all restrictions imposed by the restricted permanent license and (ii) all
40 conditions that the provider must satisfy to qualify for a permanent license.
- 41 (h) A permanent license or restricted permanent license shall be valid for as long as the
42 Commissioner determines that the provider continues to meet the requirements of this Article.
- 43 **"§ 58-64A-70. Expiration of a permit to accept deposits and start-up certificate.**
- 44 (a) A permit to accept deposits and a start-up certificate issued pursuant to this Article
45 expires 36 months after issuance.
- 46 (b) A person issued a permit to accept deposits or a start-up certificate may request an
47 extension of the permit or certificate. The request for extension shall be made in writing and
48 include both of the following:
- 49 (1) The reasons why the person has not applied for a start-up certificate or
50 preliminary certificate, as applicable.

1 (2) The estimated date the person expects to file the start-up certificate application
2 or the preliminary certificate application, as applicable.

3 (c) In response to a request for an extension, the Commissioner may do one of the
4 following:

5 (1) If the Commissioner determines there is satisfactory cause for the delay, the
6 Commissioner may extend the permit to accept deposits or a start-up
7 certificate for up to one year and may, in the Commissioner's discretion,
8 require the provider to update information previously filed pursuant to
9 G.S. 58-64A-50 or G.S. 58-64A-55 before approving any extension. There is
10 no limit to the number of extensions that may be granted by the
11 Commissioner.

12 (2) If the Commissioner determines that there is no satisfactory cause for the
13 delay, the Commissioner shall instruct the escrow agent to refund to
14 depositors all deposits held in escrow, plus any interest that may be due under
15 the terms of the non-binding reservation agreement, binding reservation
16 agreement, or continuing care contract paid by the depositors.

17 (d) Within 10 business days of the Commissioner's denial of an extension, the provider
18 shall notify each depositor of the Commissioner's denial of the extension, of the expiration of the
19 permit to accept deposits or a start-up certificate, and of any right to a refund of their deposits.

20 **"§ 58-64A-72. Material changes or deviations in information.**

21 (a) An applicant or provider shall notify the Commissioner of material changes or
22 deviations in any information submitted to the Commissioner pursuant to this Article within 10
23 business days after the applicant or provider becomes aware of the change or deviation.

24 (b) Within 30 days after receiving notice of a material change or deviation, the
25 Commissioner shall advise the applicant or provider in writing whether any additional action
26 needs to be taken as a result of the material change or deviation.

27 (c) The Commissioner may suspend any approval, certification, license, or permit issued
28 pursuant to this Article if the applicant or provider fails to give the written notice of material
29 changes or deviations required by this section. The suspension shall remain in effect until the
30 Commissioner has both assessed the potential impact of the material changes or deviations on
31 the interests of residents and depositors and taken any action necessary under this Article to
32 protect the interests of residents and depositors.

33 **"§ 58-64A-74. Denial of an application, notification, or other request for approval.**

34 (a) If the Commissioner denies an application, notification, or any other request for
35 approval pursuant to this Article, the Commissioner shall notify the applicant in writing of the
36 denial. The notification shall state the grounds for the denial. To obtain a review to determine the
37 reasonableness of the Commissioner's denial, the applicant shall make written demand upon the
38 Commissioner within 30 days after service of notification upon the applicant. The review shall
39 be completed without undue delay, and the applicant shall be notified promptly in writing as to
40 the outcome of the review. If the applicant disagrees with the outcome of the review and seeks a
41 hearing under Article 3A of Chapter 150B of the General Statutes, the applicant shall make a
42 written demand upon the Commissioner for the hearing within 30 days after service upon the
43 applicant of the notification of the outcome.

44 (b) If the Commissioner denies an application, notification, or other request for approval
45 pursuant to this Article, no portion of the fee associated with the application, notification, or
46 request for approval shall be refunded.

47 "Part 3. Expansion.

48 **"§ 58-64A-75. Expansion notification.**

49 (a) Prior to marketing and collecting deposits for a proposed expansion of a continuing
50 care retirement community that is twenty percent (20%) or more of existing independent living
51 units, a provider shall do both of the following:

- 1 (1) Notify and obtain written approval from the Commissioner.
2 (2) Notify all residents in writing of the provider's intent to expand the number of
3 independent living units at the continuing care retirement community. This
4 notification shall include the description required by subdivision (1) of
5 subsection (b) of this section.
- 6 (b) The expansion notification to the Commissioner required by this section shall include
7 all of the following:
- 8 (1) A description of the proposed expansion project, including the number of
9 independent living units to be added.
10 (2) A proposed non-binding reservation agreement.
11 (3) A proposed binding reservation agreement.
12 (4) A proposed escrow agreement that meets the requirements of
13 G.S. 58-64A-120.
14 (5) An updated disclosure statement that meets the requirements of
15 G.S. 58-64A-160.
- 16 (c) The Commissioner shall comply with the following deadlines in response to an
17 expansion notification:
- 18 (1) Within five business days after receipt of an expansion notification or of
19 materials intended to supplement an incomplete expansion notification, the
20 Commissioner shall acknowledge receipt in writing.
21 (2) Within 10 days after receipt of an expansion notification or of materials
22 intended to supplement an incomplete expansion notification, the
23 Commissioner shall determine if the expansion notification is complete and
24 inform the provider in writing of the determination. If the Commissioner
25 determines that the expansion notification is incomplete, the notice to the
26 provider shall specifically set forth and request any additional information the
27 Commissioner determines is necessary to complete the expansion notification.
28 (3) Within five days after an expansion notification is deemed complete, the
29 Commissioner shall approve or deny the application.
- 30 (d) The Commissioner shall approve the expansion notification unless the Commissioner
31 determines that any of the following requirements are not met:
- 32 (1) The expansion notification meets all requirements of this section.
33 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
34 provider.
35 (3) The proposed escrow agreement meets the requirements of G.S. 58-64A-120.
36 (4) The proposed escrow agent and depository are acceptable in accordance with
37 G.S. 58-64A-115.
- 38 (e) After the Commissioner approves the expansion notification, the Commissioner shall
39 require the provider to submit periodic sales and development reports in a form prescribed by the
40 Commissioner.
- 41 (f) After the Commissioner approves the expansion notification, the provider may do all
42 of the following:
- 43 (1) Disseminate materials, including advertisements, describing the intent to
44 expand the number of independent living units at the continuing care
45 retirement community.
46 (2) Enter into non-binding reservation agreements, binding reservation
47 agreements, and continuing care contracts for the proposed independent living
48 units.
49 (3) Collect entrance fees and deposits for the proposed independent living units.
50 All deposits collected shall be placed in escrow and shall only be released in

1 accordance with Part 4 of this Article, unless otherwise exempted by the
2 Commissioner.

3 **"§ 58-64A-80. Expansion application.**

4 (a) Prior to commencing construction of an expansion of a continuing care retirement
5 community that is twenty percent (20%) or more of existing independent living units, a provider
6 shall do both of the following:

7 (1) Receive Commissioner approval of an expansion notification pursuant to
8 G.S. 58-64A-75.

9 (2) Apply to the Commissioner for approval to commence construction.

10 (b) The application required by this section shall include all of the following:

11 (1) An application fee of one thousand dollars (\$1,000).

12 (2) A feasibility study, prepared by an independent person experienced in
13 preparing feasibility studies for continuing care retirement communities and
14 acceptable to the Commissioner, with appropriate financial, marketing, and
15 actuarial assumptions that reasonably projects the market and financial
16 viability of the proposed expansion. The study shall include all of the
17 following items:

18 a. A description of the provider's proposed expansion project, including
19 the number of independent living units being added, fee structure, a
20 description of how the projected fees were computed, and the
21 anticipated project time line.

22 b. A description of the construction plans, construction financing, and
23 permanent financing for the proposed expansion project, including all
24 of the following:

25 1. A description of all debt to be incurred by the provider,
26 including the source, anticipated terms, and costs of financing.

27 2. A description of the source and amount of any equity to be
28 contributed by the provider.

29 3. A description of the source and amount of all other funds,
30 including entrance fees, that will be necessary to complete and
31 operate the proposed expansion.

32 4. A statement itemizing all estimated project costs, including the
33 real property costs, the cost of designing and constructing the
34 proposed expansion, and all similar costs that the provider
35 expects to incur prior to the opening of the expansion. This
36 itemization shall identify all costs related to the proposed
37 expansion, including financing expenses, resident acquisition
38 costs, marketing costs, and furniture, fixtures, and equipment.

39 5. An estimate of any reserves required by financing and the
40 operating reserve required pursuant to Part 9 of this Article.

41 c. An analysis of the potential market for the proposed expansion,
42 addressing all of the following:

43 1. The population, household growth, age distribution, household
44 income, household tenure, and resale housing values within the
45 primary market area.

46 2. A demand analysis of the range of likely target consumers
47 within the primary market area as well as estimated penetration
48 rates.

49 3. An economic analysis of current market conditions and trends
50 that can impact the feasibility of the proposed expansion,
51 positively or negatively, including real estate, income,

- 1 employment, and the general economic outlook for the primary
2 market area and surrounding areas.
- 3 4. Existing and planned competition in the primary market area.
4 d. A description of the sales and marketing plan, including all of the
5 following:
6 1. Marketing projections, anticipated sales, and cancellation
7 rates.
8 2. Month-by-month projections of independent living unit sales
9 through stabilized occupancy.
10 3. A description of the marketing methods, staffing, and
11 advertising media to be used by the provider.
12 4. An estimate of the total entrance fees to be received.
13 e. Projected move-in rates and resident profiles, adult care home bed and
14 nursing bed utilization, and living unit turnover or resale rates.
15 f. A description or analysis of costs and revenues throughout the
16 development and resident fill-up period of the proposed expansion.
17 g. Five-year prospective financial statements of the provider which shall
18 be prepared in accordance with standards adopted by the American
19 Institute of Certified Public Accountants.
20 h. Any other factors that, in the opinion of the preparer, will affect the
21 feasibility of the expansion.
22 i. The name of the person who prepared the feasibility study and their
23 experience in preparing similar studies or otherwise consulting in the
24 field of continuing care.
25 j. An evaluation and opinion by the person who prepared the feasibility
26 study of the underlying assumptions used as a basis for the study,
27 including a statement on whether the assumptions are reasonable and
28 proper.
- 29 (3) An actuarial study prepared in accordance with accepted actuarial standards
30 of practice which estimates when the continuing care retirement community
31 is projected to be in satisfactory actuarial balance once stabilized occupancy
32 of the expansion is achieved. Providers who do not collect entrance fees or
33 some other prepayment of costs are exempt from this requirement and shall
34 only be required to submit an actuarial projection of future population flows
35 and adult care home bed and nursing bed needs. An actuarial projection of
36 future population flows and adult home care bed and nursing bed needs shall
37 use (i) appropriate mortality, morbidity, withdrawal, occupancy, and other
38 demographic assumptions and (ii) a projection period that extends to a point
39 at which, in the actuary's professional judgment, the use of a longer period
40 would not materially affect the results and conclusions.
- 41 (4) An updated disclosure statement that meets the requirements of
42 G.S. 58-64A-160.
- 43 (5) If applicable, confirmation that the provider has secured commitments for
44 construction financing and long-term financing or that a documented plan
45 acceptable to the Commissioner has been adopted by the provider for
46 long-term financing.
- 47 (6) If the expansion includes any land or other real property that is to be leased,
48 confirmation, if applicable, that the lease has been approved by the
49 Commissioner pursuant to G.S. 58-64A-25.

- 1 (7) Any other data and pertinent information as the Commissioner may
2 reasonably require with respect to the provider or the continuing care
3 retirement community to determine the feasibility of the expansion.
- 4 (c) The Commissioner shall comply with the following deadlines in response to an
5 expansion application:
- 6 (1) Within five business days after receipt of an expansion application or of
7 materials intended to supplement an incomplete expansion application, the
8 Commissioner shall acknowledge receipt in writing.
- 9 (2) Within 30 days after receipt of an expansion application or of materials
10 intended to supplement an incomplete expansion application, the
11 Commissioner shall determine if the expansion application is complete and
12 inform the applicant in writing of the determination. If the Commissioner
13 determines that the expansion application is incomplete, the notice to the
14 provider shall specifically set forth and request any additional information the
15 Commissioner determines is necessary to complete the expansion application.
- 16 (3) Within 30 days after an application is deemed complete, the Commissioner
17 shall approve or deny the application.
- 18 (d) The Commissioner shall approve the expansion application unless the Commissioner
19 determines that any of the following requirements are not met:
- 20 (1) The expansion application meets all requirements of this section.
- 21 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
22 applicant.
- 23 (3) The feasibility study meets all of the following requirements:
- 24 a. Includes in the prospective financial statements all current obligations
25 and liabilities of the provider as well as those to be undertaken by the
26 provider.
- 27 b. Demonstrates that the expansion is financially viable and will not have
28 an unreasonably adverse effect on the financial ability of the provider
29 to furnish continuing care.
- 30 c. Demonstrates the existence of a market for the proposed expansion
31 based on reliable data, which meets all of the following requirements:
- 32 1. Is specific to the continuing care retirement community.
- 33 2. Considers existing and proposed competition in the primary
34 market area.
- 35 3. Demonstrates that the rate of penetration in the proposed
36 market area is within acceptable industry ranges.
- 37 (4) The provider demonstrates the ability to provide continuing care and meet all
38 financial and contractual obligations related to its operations, including the
39 financial requirements of this Article.
- 40 (5) The provider, if applicable, has secured commitments for construction
41 financing and long-term financing or that a documented plan acceptable to the
42 Commissioner has been adopted by the applicant for long-term financing.
- 43 (6) The actuarial study, if applicable, projects that the continuing care retirement
44 community will be in satisfactory actuarial balance within a reasonable period
45 of time once stabilized occupancy of the expansion is achieved, or if no
46 actuarial study is required, the actuarial projection of future population flows
47 demonstrates a sufficient number of adult care home beds and nursing beds to
48 meet the needs of residents and the contractual obligations of the provider.
- 49 (e) After the Commissioner approves the expansion application, the Commissioner shall
50 require the provider to submit periodic sales and development reports in a form prescribed by the
51 Commissioner to monitor the expansion project.

1 All changes to an escrow agreement shall be submitted to, and approved by, the
2 Commissioner before use by the provider.

3 **"§ 58-64A-130. Entrance fee and deposit delivery to the escrow agent.**

4 (a) The provider shall deliver to the escrow agent any entrance fees or deposits required
5 to be maintained in an escrow account pursuant to this Article within 10 business days after
6 receipt by the provider.

7 (b) Any deposit delivery to an escrow agent pursuant to this Article shall be accompanied
8 with a copy of the executed non-binding reservation agreement, binding reservation agreement,
9 or continuing care contract, a copy of the receipt given to the depositor, a summary of all deposits
10 made on that date, and any other materials required by the escrow agent.

11 **"§ 58-64A-135. Investment of funds in escrow.**

12 (a) All entrance fees and deposits subject to an escrow agreement under this Article shall
13 be maintained by the escrow agent in one of the following manners:

14 (1) Investment in an interest-bearing account.

15 (2) Investment in instruments guaranteed by the federal government or an agency
16 of the federal government.

17 (3) Investment in investment funds secured by federally guaranteed instruments.

18 (b) Any investment may not diminish the funds held in escrow below the amounts
19 required by this Article.

20 **"§ 58-64A-140. Earnings from funds in escrow.**

21 (a) Interest, income, and other gains derived from funds held in an escrow account may
22 not be released or distributed from the escrow account except upon written approval of the
23 Commissioner.

24 (b) Approval by the Commissioner for the release of earnings generated from funds held
25 in escrow shall be based upon an assessment that funds remaining in the escrow account meet
26 the requirements of this Article and, if applicable, will be sufficient to pay refunds and any
27 interest promised to all depositors.

28 (c) When release of earnings is approved by the Commissioner, interest earned by the
29 funds in the escrow account shall be distributed to the provider or depositors in accordance with
30 the terms of the continuing care contract, binding reservation agreement, or non-binding
31 reservation agreement.

32 **"§ 58-64A-145. Escrowed funds not to be used as collateral.**

33 No funds held in an escrow account shall be encumbered or used as collateral for any
34 obligation of the provider, or any other person, unless the provider obtains prior written approval
35 from the Commissioner for the encumbrance or use as collateral. The Commissioner shall not
36 approve any encumbrance or use as collateral under this section unless the encumbrance or use
37 as collateral is expressly subordinated to the rights of depositors under this Article to refunds of
38 their entrance fees or deposits.

39 **"§ 58-64A-150. Refunds of escrowed entrance fees and deposits.**

40 (a) An escrow agent shall refund to a depositor, or their legal representative, all amounts
41 required by the depositor's non-binding reservation agreement, binding reservation agreement,
42 or continuing care contract upon receiving written notice from the provider of the death of a
43 depositor, nonacceptance by the provider, voluntary cancellation, the denial of an application
44 pursuant to this Article, or upon written notice from the Commissioner. Refunds required by this
45 subsection shall be paid within 10 business days after the escrow agent receives the written notice
46 required by this subsection.

47 (b) If voluntary cancellation of a continuing care contract or a binding reservation
48 agreement occurs after construction of the continuing care retirement community or expansion
49 of a continuing care retirement community has begun, but prior to the independent living unit's
50 initial occupancy, the refund may be delayed until another depositor has reserved a similar
51 independent living unit and paid the necessary entrance fee or deposit. This delay shall not exceed

1 one year, unless the time period is extended by the Commissioner upon a showing of good cause
2 by the escrow agent.

3 **"§ 58-64A-155. Release of escrowed entrance fees and deposits.**

4 (a) To request a release of the first twenty-five percent (25%) of each escrowed entrance
5 fee and deposit, a provider shall petition in writing to the Commissioner and certify all of the
6 following:

7 (1) The provider has presold at least fifty percent (50%) of the proposed
8 independent living units, having received a minimum ten percent (10%)
9 deposit of the total of each applicable entrance fee and placed in escrow. Any
10 independent living unit for which a refund is pending may not be counted
11 toward the fifty percent (50%) requirement.

12 (2) The provider has received a commitment for any permanent mortgage loan or
13 other long-term financing of the proposed continuing care retirement
14 community or expansion, and any conditions of the commitment prior to
15 disbursement of funds thereunder have been substantially satisfied.

16 (3) For a proposed continuing care retirement community, the aggregate entrance
17 fees received or receivable by the provider pursuant to binding reservation
18 agreements and continuing care contracts, plus the anticipated proceeds of any
19 first mortgage loan or other long-term financing commitment, plus any equity
20 being contributed by the provider, are equal to not less than ninety percent
21 (90%) of the following amount: (i) the aggregate cost of constructing or
22 purchasing, equipping, and furnishing the proposed continuing care retirement
23 community, plus (ii) not less than ninety percent (90%) of the funds estimated
24 to be necessary to fund start-up losses and to reasonably assure full
25 performance of the provider's future continuing care obligations, as reported
26 in the statement of cash flows required by G.S. 58-64A-160.

27 (b) To request a release of the remaining seventy-five percent (75%) of escrowed
28 entrance fees and deposits, a provider shall petition in writing to the Commissioner and certify
29 all of the following:

30 (1) The provider has presold at least seventy percent (70%) of the proposed
31 independent living units, having received a minimum ten percent (10%)
32 deposit of each applicable entrance fee and maintains at least seventy-five
33 percent (75%) of each entrance fee or deposit received in escrow, or has
34 maintained an independent living unit occupancy minimum of seventy percent
35 (70%) for at least 60 days. Any independent living unit for which a refund is
36 pending may not be counted toward the seventy percent (70%) requirement.

37 (2) Construction or purchase of the independent living units has been completed
38 and an occupancy permit, if applicable, has been issued by the local
39 government having authority to issue those permits.

40 (3) The independent living units are available for occupancy by the new residents.

41 (c) The Commissioner shall instruct the escrow agent in writing to release to the provider
42 entrance fees and deposits in the escrow account only after the Commissioner has confirmed the
43 information provided by the provider pursuant to subsection (a) or subsection (b) of this section.

44 (d) The escrow agent shall release the entrance fees and deposits held in the escrow
45 account to the provider only after the Commissioner has instructed it to do so in writing.

46 (e) When an application describes different phases of construction that will be completed
47 and commence operating at different times, the Commissioner may apply the requirements in
48 subsections (a) and (b) of this section to any one or group of phases requested by the provider,
49 provided the phase or group of phases is shown in the provider's prospective financial statements
50 to be, in the Commissioner's opinion, economically viable.

- 1 injunctive or restrictive court order, or within the past five years, had
2 any state or federal license or permit suspended or revoked as a result
3 of an action brought by a governmental agency or department.
4 d. The extent to which any person will be responsible for the financial
5 and contractual obligations of the provider.
6 (7) A statement disclosing whether any affiliate or other related party provides,
7 or will provide in the case of a continuing care retirement community under
8 development, goods, leases, or services to the provider of an aggregate value
9 of five thousand dollars (\$5,000) or more within any fiscal year, not already
10 disclosed pursuant to subdivision (4) or (6) of this subsection, and a
11 description of the goods, leases, or services and the actual or probable cost to
12 the provider, or a statement that this cost cannot presently be estimated and
13 the reason why it cannot be presently estimated.
14 (8) A statement indicating whether the provider has an affiliation with any
15 religious, charitable, or other person, and the extent and description of the
16 affiliation.
17 (9) The name of any other person who will be responsible for the financial and
18 contractual obligations of the provider not already disclosed and the extent of
19 their responsibility.
20 (10) A statement as to whether the provider is, or will be, a part of an obligated
21 group and, if so, the names of the other persons in, or to be in, the obligated
22 group.
23 (11) A statement as to whether the provider or continuing care retirement
24 community has endowment funds, or has endowment funds available through
25 an affiliate, that are available to provide financial aid to residents, including a
26 description of the funds and any restrictions on their use.
27 (12) The name, address, and description of the physical property or properties of
28 the continuing care retirement community, existing or proposed, and to the
29 extent proposed, the estimated completion date or dates, whether construction
30 has begun, and the contingencies subject to which construction may be
31 deferred.
32 (13) The number of existing living units, or the number of living units to be
33 constructed, at the continuing care retirement community.
34 (14) If the provider is licensed to provide continuing care without lodging, a
35 description of the continuing care without lodging program, including the
36 primary market area served.
37 (15) The number or estimated number of residents of the continuing care retirement
38 community to be provided services by the provider pursuant to a continuing
39 care or continuing care without lodging contract.
40 (16) The 12-month daily average occupancy rate at the continuing care retirement
41 community, by living unit type, as of the provider's fiscal year-end for the past
42 five years or for each year of the continuing care retirement community's
43 operation if it has been operated for less than five years.
44 (17) A description of any property rights of residents in the continuing care
45 retirement community.
46 (18) The services provided or proposed to be provided pursuant to continuing care
47 and continuing care without lodging contracts, including the extent to which
48 health care is furnished, and a clear statement of which services are included
49 for specified periodic fees and which services are or will be made available
50 for an extra charge. The description shall include a statement describing what
51 health care services are or will be provided by the provider directly and what

- 1 health care services are or will be provided through a contract with a third
2 party.
- 3 (19) A description of all nonancillary fees required of residents, including entrance
4 fees, periodic fees, transfer fees, and resale fees, if any. The description shall
5 include all of the following:
- 6 a. A statement of the fees that will be charged if a resident marries or
7 otherwise increases the number of persons residing in the resident's
8 living unit while a resident of the continuing care retirement
9 community and a statement of the terms concerning the entry of a
10 spouse or other person to the continuing care retirement community
11 and the consequences if the spouse or other person does not meet the
12 requirements for entry.
- 13 b. The manner by which the provider may adjust periodic fees and the
14 limitations on the adjustments, if any; and, if the continuing care
15 retirement community is already in operation, a table showing the
16 frequency and average percent increase and average dollar amount of
17 each increase in periodic fees for the previous five years, or for each
18 year of the continuing care retirement community's operation if it has
19 been operated for less than five years. If the continuing care retirement
20 community is not yet in operation, the provider shall include a table
21 showing the expected frequency and average percent increase and
22 average dollar amount of each increase in periodic fees utilized in the
23 five-year prospective financial statements required pursuant to
24 subdivision (29) of this subsection.
- 25 (20) The circumstances under which a resident will be permitted to remain a
26 resident at the continuing care retirement community in the event of possible
27 financial difficulties of the resident.
- 28 (21) The terms and conditions under which a continuing care and continuing care
29 without lodging contract may be canceled by the provider, or by the resident,
30 and the conditions, if any, under which all or any portion of the entrance fee
31 or any other fee will be refunded in the event of cancellation of the continuing
32 care or continuing care without lodging contract by the provider, or by the
33 resident, or in the event of the death of the resident, prior to, or following,
34 occupancy of a living unit or the start of services.
- 35 (22) The conditions under which a living unit occupied by a resident may be made
36 available by the provider to a different or new resident other than on the death
37 of the prior resident.
- 38 (23) The conditions or circumstances under which a provider may require a
39 resident to move from their living unit to another living unit for the safety of
40 the resident or for the good of the provider.
- 41 (24) The health and financial condition required for an individual to be accepted as
42 a resident and to continue as a resident once accepted, including the effect of
43 any change in the health or financial condition of a person between the date
44 of entering into a continuing care or continuing care without lodging contract
45 and the date of initial occupancy of a living unit or the start of services.
- 46 (25) Any age and insurance requirements for admission.
- 47 (26) The provisions that have been made or will be made, including, but not limited
48 to, the requirements of G.S. 58-64A-115 and G.S. 58-64A-255, to provide
49 reserve funding or security to enable the provider to perform its obligations
50 under continuing care and continuing care without lodging contracts,
51 including the establishment of escrow accounts, trusts, or reserve funds,

1 together with the manner in which these funds will be invested, and the names
2 and experience of any person or persons who will make the investment
3 decisions. The information provided shall also include a schedule detailing
4 how the operating reserve for the continuing care retirement community has
5 been calculated which shall agree with the amount calculated and reported to
6 the Commissioner pursuant to G.S. 58-64A-260.

7 (27) A description of any expansion, renovation, or planned expansion or
8 renovation of the continuing care retirement community.

9 (28) Audited financial statements meeting the requirements of
10 G.S. 58-64A-205(a)(1).

11 (29) Five-year prospective financial statements meeting the requirements of
12 G.S. 58-64A-205(a)(2). For continuing care retirement communities that are
13 under development, the prospective financial statements required by this
14 subdivision shall include narrative disclosure detailing all significant
15 assumptions used in the preparation of the prospective financial statements,
16 including all of the following:

17 a. Details of any long-term financing for the purchase or construction of
18 the continuing care retirement community, including interest rate,
19 repayment terms, loan covenants, and assets pledged.

20 b. Details of any leasing agreements where the provider is leasing from
21 another person any part of the real property of the continuing care
22 retirement community, including the length of the lease and the
23 remaining term.

24 c. Details of any other funding sources that the provider anticipates using
25 to fund any start-up losses or to provide reserve funds to assure full
26 performance of the obligations of the provider under continuing care
27 contracts.

28 d. The total entrance fees to be received from or on behalf of residents at,
29 or prior to, commencement of operations along with anticipated
30 accounting methods used in the recognition of revenues from and
31 expected refunds of entrance fees.

32 e. A description of any equity capital to be received by the provider.

33 f. The cost of the acquisition of the continuing care retirement
34 community or, if the continuing care retirement community is to be
35 constructed, the estimated construction cost and cost to acquire the
36 land.

37 g. Related costs, including financing and development costs, that the
38 provider expects to incur or become obligated for prior to the
39 commencement of operations.

40 h. The marketing and resident acquisition costs to be incurred prior to
41 commencement of operations.

42 i. A description of the assumptions used for calculating the estimated
43 occupancy rate of the continuing care retirement community and the
44 effect on the income of the provider of government subsidies for health
45 care services.

46 (30) A narrative describing the reasons for any material differences between (i) the
47 five-year prospective financial statements included as a part of the disclosure
48 statement recorded most immediately subsequent to the start of the provider's
49 most recently completed fiscal year and (ii) the actual results of operations of
50 the provider's most recently completed fiscal year.

1 (31) After the opening of a continuing care retirement community, a table detailing
2 the following key financial metrics for the past three fiscal years, including
3 the most recent fiscal year, or for each year of the continuing care retirement
4 community's operation if it has been operated for less than three years, plus
5 the next three fiscal years, based on the provider's current and prior annual
6 audited financial statements and current five-year prospective financial
7 statements filed with the Commissioner pursuant to G.S. 58-64A-205. If there
8 is a material year over year change in any of the key financial metrics, the
9 provider shall include a narrative describing the reasons for the material
10 change. The table shall include all of the following:

- 11 a. Unrestricted cash and investments.
- 12 b. Average daily cash operating expenses.
- 13 c. Days cash on hand ratio.
- 14 d. Total long-term debt.
- 15 e. Unrestricted cash and investments to long-term debt ratio.
- 16 f. Annual building and land lease payments.
- 17 g. Annual debt service, including both principal and interest.
- 18 h. Debt service coverage ratio.
- 19 i. Operating ratio.
- 20 j. Net operating margin ratio.

21 (32) If the provider has had an actuarial study prepared within the prior three years,
22 a statement of actuarial opinion which includes a description of the key
23 assumptions used to prepare the actuarial study and an opinion on satisfactory
24 actuarial balance.

25 (33) A summary of the last examination report issued by the Commissioner, if any,
26 with references to the page numbers of the examination report noting any
27 deficiencies found by the Commissioner, and the actions taken by the provider
28 to rectify those deficiencies, indicating in the summary where the full
29 examination report may be inspected at the continuing care retirement
30 community. The summary required by this subdivision shall not be required
31 if the last examination report is more than three years old.

32 (34) Any other material information concerning the continuing care retirement
33 community or the provider which, if omitted, would lead a reasonable person
34 not to enter a continuing care or continuing care without lodging contract with
35 the provider.

36 (b) A copy of the most common continuing care and continuing care without lodging
37 contract used by the provider shall be attached to each disclosure statement. To the extent
38 multiple continuing care or continuing care without lodging contracts are utilized by the provider
39 for the continuing care retirement community, a narrative shall be included within the disclosure
40 statement listing each contract type offered and the material differences of each.

41 (c) The cover page of the disclosure statement shall state, in a prominent location and in
42 boldface type, all of the following:

- 43 (1) The date of the disclosure statement.
- 44 (2) The last date through which the disclosure statement may be delivered.
- 45 (3) That the delivery of the disclosure statement to a contracting party before the
46 execution of a binding reservation agreement, continuing care contract, or
47 continuing care without lodging contract is required by this Article.
- 48 (4) That the disclosure statement has not been reviewed or approved by any
49 government agency or representative to ensure accuracy of the information set
50 out.

1 (5) That the disclosure statement has been filed with, and recorded by, the North
2 Carolina Department of Insurance in accordance with this Article.

3 (6) That the disclosure statement contains all of the information required by this
4 Article, that it is correct, in all material respects, and that knowingly delivering
5 a disclosure statement that contains an untrue statement or omits a material
6 fact may subject the provider to penalties as set forth in this Article.

7 (d) The date on the cover page of the disclosure statement shall coincide with the last day
8 of the provider's fiscal year covered by the information contained within the disclosure statement.

9 (e) The disclosure statement shall be in plain English and in language understandable by
10 a layperson and combine conciseness, simplicity, and accuracy to fully advise residents and
11 potential residents of the items required by this section.

12 (f) The Commissioner shall review the disclosure statement for completeness but is not
13 required to review the disclosure statement for accuracy.

14 (g) The Commissioner may require a provider to alter or amend a disclosure statement to
15 provide full and fair disclosure to residents and prospective residents, and the Commissioner may
16 require the revision of a disclosure statement which the Commissioner finds to be incomplete,
17 unnecessarily complex, voluminous, confusing, or illegible.

18 (h) The Commissioner may prescribe a standardized format for the disclosure statement
19 required by this section.

20 (i) The Commissioner shall post the current disclosure statement for each continuing care
21 retirement community on the Department's website in accordance with this Article.

22 **"§ 58-64A-165. Required delivery of disclosure statement.**

23 (a) A provider shall deliver a current disclosure statement meeting the requirements of
24 G.S. 58-64A-160 to the person or the person's legal representative with whom a binding
25 reservation agreement, continuing care contract, or continuing care without lodging contract is
26 to be entered into. The disclosure statement shall be delivered no later than the earliest of the
27 following occurrences: (i) the execution of a binding reservation agreement, continuing care
28 contract, or continuing care without lodging contract, or (ii) the transfer of any money or other
29 consideration, other than a non-binding reservation deposit, to a provider by or on behalf of a
30 prospective resident. For purposes of this subsection, a disclosure statement is current if (i) it is
31 dated within one year plus 160 days prior to the date of delivery and (ii) it is the most recently
32 recorded disclosure statement on file with the Commissioner.

33 (b) The delivery required by this section may be by electronic means if the provider
34 obtains the written consent of the person with whom the binding reservation agreement,
35 continuing care contract, or continuing care without lodging contract is to be entered into. For
36 the purposes of this subsection, delivery by electronic means shall mean delivery by either of the
37 following methods:

38 (1) Delivery to an electronic mail address at which the person has consented to
39 receive the disclosure statement.

40 (2) Both of the following:

41 a. Posting the disclosure statement on an electronic network or site
42 accessible by the internet through use of a mobile application,
43 computer, mobile device, tablet, or any other electronic device.

44 b. Sending separate notice of the posting described in sub-subdivision a.
45 of this subdivision to the electronic mail address at which the person
46 consented to receive notice of the disclosure statement posting.

47 (c) After receiving delivery of a disclosure statement pursuant to this section, a
48 prospective resident shall sign an acknowledgement of receipt. The acknowledgement shall
49 include (i) the date, (ii) the name of the person signing, and (iii) the date of the disclosure
50 statement received, including date revised, if any. The provider shall provide a copy of the
51 acknowledgement of receipt to the person signing and shall maintain the original. The

1 acknowledgement of receipt required by this subsection may be received, given, and maintained
2 in either electronic or paper form.

3 (d) A copy of all disclosure statements, including all amendments, filed with and
4 recorded by the Commissioner shall be maintained by the provider, in either electronic or paper
5 form, for at least five years.

6 **"§ 58-64A-170. Annual revised disclosure statements.**

7 (a) Within 150 days following the end of each fiscal year, a provider shall file with the
8 Commissioner a revised disclosure statement setting forth current information required pursuant
9 to G.S. 58-64A-160. The annual disclosure statement revision shall be accompanied by an annual
10 filing fee of two thousand dollars (\$2,000).

11 (b) Within five business days of receipt of an annual revised disclosure statement and the
12 annual filing fee, the Commissioner shall notify the provider in writing that (i) the revised
13 disclosure statement has been received and recorded, (ii) the provider has met the filing
14 requirements of this section, and (iii) the annual revised disclosure statement is now considered
15 to be the current disclosure statement for purposes of this Article. After sending the notice, the
16 Commissioner shall post the annual revised disclosure statement on the Department's website
17 within five business days. After receiving the Commissioner's notice, the provider shall make the
18 annual revised disclosure statement available to all residents and depositors either in electronic
19 or paper form.

20 (c) The Commissioner may, upon a showing of good cause by the provider, extend the
21 due date of the annual disclosure statement revision for a reasonable period of time not to exceed
22 30 days.

23 (d) If the annual disclosure statement revision is not received by the due date and no
24 extension has been granted, a one thousand dollar (\$1,000) late fee shall accompany submission
25 of the annual disclosure statement revision. If the annual disclosure statement revision is more
26 than 30 days past due, an additional fee of thirty dollars (\$30.00) for each day over the first 30
27 days shall accompany submission of the annual disclosure statement revision. The Commissioner
28 may waive the late fee upon a showing of good cause by the provider.

29 **"§ 58-64A-175. Other revisions to disclosure statement.**

30 (a) A provider may revise its disclosure statement at any time if, in the opinion of the
31 provider, revision is necessary to prevent an otherwise current disclosure statement from
32 containing a material misstatement of fact or omitting a material fact required to be stated therein.
33 A provider that revises its disclosure statement for this purpose shall submit the revised disclosure
34 statement to the Commissioner before delivery of the disclosure statement to any resident or
35 prospective resident.

36 (b) If a disclosure statement is revised in accordance with this section or
37 G.S. 58-64A-160(g), the cover page shall additionally be revised to reflect the revision date.

38 (c) Within five business days of receipt of a revised disclosure statement pursuant to this
39 section, the Commissioner shall notify the provider in writing that the revised disclosure
40 statement has been received and recorded and is considered to be the current disclosure statement
41 for purposes of this Article. After sending this notification, the Commissioner shall post the
42 revised disclosure statement on the Department's website within five business days. After
43 receiving the Commissioner's notification, a provider revising its disclosure statement pursuant
44 to this section shall make the revised disclosure statement available to all residents either in
45 electronic or paper form.

46 **"Part 6. Binding Reservation Agreement and Continuing Care Contract.**

47 **"§ 58-64A-185. Binding reservation agreement.**

48 A binding reservation agreement shall include all of the following:

- 49 (1) A provision that the person entering into the agreement may rescind the
50 agreement within 30 days following the later of the following occurrences: (i)

1 the execution of the agreement or (ii) the receipt of a disclosure statement that
2 meets the requirements of G.S. 58-64A-160.

3 (2) A provision that the agreement shall be automatically canceled if either of the
4 following occurs: (i) a depositor dies before signing a continuing care contract
5 or (ii) a depositor would be precluded from signing a continuing care contract
6 and occupying a living unit in the continuing care retirement community under
7 the terms of a continuing care contract due to illness, injury, or incapacity.

8 (3) A provision that, if an agreement is rescinded, automatically canceled, or
9 otherwise canceled by the depositor, the depositor shall receive a refund of all
10 money or other consideration transferred to the provider. All of the following
11 shall be deducted from the depositor's refund:

12 a. Nonstandard costs specifically incurred by the provider at the request
13 of the depositor and described in the agreement.

14 b. Any nonrefundable fees specifically set forth in the agreement.

15 c. Any service charge specifically set forth in the agreement that shall
16 not exceed (i) three thousand dollars (\$3,000), (ii) two percent (2%) of
17 the entrance fee, or (iii) the amount of consideration transferred to the
18 provider by the depositor. An agreement shall not include a provision
19 that imposes a service charge based on (i) a cancellation caused by the
20 failure of a provider to meet its obligations under the agreement, or (ii)
21 the failure of the provider to obtain a permanent license in accordance
22 with this Article.

23 (4) A provision that any refund due to a depositor for a cancellation or termination
24 for reasons not provided for in this section shall be computed in accordance
25 with the terms of the agreement.

26 **"§ 58-64A-190. Continuing care contract.**

27 (a) A continuing care contract shall include all of the following provisions:

28 (1) A provision that the person contracting with the provider may rescind the
29 contract within 30 days following the later of the execution of the contract or
30 the receipt of a disclosure statement that meets the requirements of
31 G.S. 58-64A-160, and a resident to whom the contract pertains is not required
32 to move into the continuing care retirement community before the expiration
33 of the 30-day period.

34 (2) A provision that, if a resident dies before occupying a living unit in the
35 continuing care retirement community, or if, on account of illness, injury, or
36 incapacity, a resident would be precluded from occupying a living unit in the
37 continuing care retirement community under the terms of the contract, the
38 contract is automatically canceled.

39 (3) A provision that, for rescinded or canceled contracts under this subsection and
40 contracts canceled before a living unit is initially available for occupancy by
41 the first resident of a living unit, the resident or the resident's legal
42 representative shall receive a refund of all money or other consideration
43 transferred to the provider, less (i) periodic fees specified in the contract and
44 applicable only to the period a living unit was actually occupied by the
45 resident; (ii) those nonstandard costs specifically incurred by the provider at
46 the request of the resident and described in the contract or any contract
47 amendment signed by the resident; (iii) nonrefundable fees, if set out in the
48 contract; and (iv) a reasonable service charge, if set out in the contract, not to
49 exceed the greater of three thousand dollars (\$3,000) or two percent (2%) of
50 the entrance fee. In no event shall the service charge exceed the amount of
51 consideration transferred to the provider by the resident, or a service charge

- 1 be assessed due to the termination of the contract because of the failure of the
 2 provider to meet its obligations under the contract, or upon the failure of the
 3 provider to obtain a permanent license in accordance with this Article.
 4 (4) A provision that any refund due to a resident for a cancellation or termination
 5 for reasons not provided for in this section shall be computed in accordance
 6 with the terms of the contract.
 7 (b) A continuing care contract shall specify all of the following:
 8 (1) All fees required of residents, including any entrance fee and any ongoing
 9 periodic fees.
 10 (2) The services to be provided.
 11 (3) The policy regarding changing the resident's living unit, if necessary, for the
 12 protection of the health or safety of the resident or the general and economic
 13 welfare of other continuing care retirement community residents.
 14 (4) The policies to be implemented if the resident cannot pay the periodic fees.
 15 (5) The terms governing the refund of any portion of the entrance fee in the event
 16 of death or cancellation by the resident or provider.
 17 (6) The policy regarding increasing the periodic fees.
 18 (7) A description of the living unit.
 19 (8) Any property rights of the resident.
 20 (9) The policy, if any, regarding periodic fee adjustments if the resident is absent
 21 from the continuing care retirement community.
 22 (10) Any requirement that the resident maintain long-term care insurance or apply
 23 for Medicaid benefits or any other public assistance program.
 24 (c) A continuing care contract shall include the following notice immediately above the
 25 contract signature line and be in type that is boldfaced, capitalized, underlined, or otherwise set
 26 out from the surrounding written material so as to be conspicuous:

27
 28 "NOTICE
 29

30 Because the authority to enter into continuing care contracts granted by the North Carolina
 31 Department of Insurance is neither a guarantee of performance by the provider nor an
 32 endorsement of any continuing care contract provision, prospective residents must carefully
 33 consider the risks, benefits, and costs before signing a continuing care contract and are strongly
 34 encouraged to seek financial and legal advice before doing so."

35 "Part 7. Continuing Care Without Lodging.

36 **"§ 58-64A-195. Application.**

37 (a) No person shall arrange or provide continuing care without lodging unless licensed
 38 by the Commissioner pursuant to this Article. A provider who has obtained a permanent license
 39 or a restricted permanent license pursuant to this Article may submit an application to the
 40 Commissioner for a continuing care without lodging license. The application shall include all of
 41 the following:

- 42 (1) An application fee of five hundred dollars (\$500.00).
 43 (2) A draft amended disclosure statement containing a description of the proposed
 44 continuing care without lodging program, including the primary market area
 45 to be served, the types of services to be provided, and the fees to be charged.
 46 (3) A copy of the proposed continuing care without lodging contract.
 47 (4) An actuarial study prepared in accordance with accepted actuarial standards
 48 of practice which estimates when the continuing care without lodging program
 49 is projected to be in satisfactory actuarial balance. Providers who do not
 50 collect entrance fees or some other type of up-front prepayment of costs are
 51 exempt from this requirement and shall only be required to submit an actuarial

- 1 projection of future population flows and adult care home bed and nursing bed
2 needs using appropriate mortality, morbidity, withdrawal, occupancy, and
3 other demographic assumptions and using a projection period that extends to
4 a point at which, in the actuary's professional judgment, the use of a longer
5 period would not materially affect the results and conclusions.
- 6 (5) A market study prepared by a person experienced in the preparation of market
7 studies for continuing care without lodging or similar programs, and
8 acceptable to the Commissioner, that demonstrates sufficient interest in a
9 continuing care without lodging program.
- 10 (6) Prospective financial statements prepared by a certified public accountant that
11 show the financial impact of providing continuing care without lodging on the
12 provider and the continuing care retirement community. The prospective
13 financial statements shall include a statement of activities reporting the
14 revenue and expense details for providing continuing care without lodging, as
15 well as the impact the program will have on the operations of the provider and
16 the continuing care retirement community, including the operating reserve.
- 17 (7) Evidence of the license required under Part 3 of Article 6 of Chapter 131E of
18 the General Statutes to provide home care services, or a contract with a
19 licensed home care agency for the provision of home care services to be
20 provided to residents under the continuing care without lodging program.
- 21 (b) The Commissioner shall comply with the following deadlines in response to an
22 application for a continuing care without lodging license:
- 23 (1) Within five business days after receipt of an application or of materials
24 intended to supplement an incomplete application, the Commissioner shall
25 acknowledge receipt in writing.
- 26 (2) Within 30 days after receipt of an application or of materials intended to
27 supplement an incomplete application, the Commissioner shall determine if
28 the application is complete and inform the applicant in writing of the
29 determination. If the Commissioner determines that the application is
30 incomplete, the notice to the applicant shall specifically set forth and request
31 any additional information the Commissioner determines is necessary to
32 complete the application.
- 33 (3) Within 30 days after an application is deemed complete, the Commissioner
34 shall approve or deny the application.
- 35 (c) The Commissioner shall approve an application for a continuing care without lodging
36 license unless the Commissioner determines that any of the following requirements are not met:
- 37 (1) The application meets all requirements of this section.
- 38 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
39 applicant.
- 40 (3) The applicant is able to provide continuing care without lodging as proposed.
- 41 (4) There is sufficient consumer interest in the continuing care without lodging
42 program proposed by the applicant.
- 43 (5) The program proposed by the applicant will not have a detrimental impact on
44 the overall operations of the applicant and continuing care retirement
45 community.
- 46 (d) After the issuance of a continuing care without lodging license, the applicant (i) may
47 arrange or provide continuing care without lodging and (ii) shall file an amended disclosure
48 statement with the Commissioner which contains the information regarding continuing care
49 without lodging required by this section and G.S. 58-64A-160.

1 (e) After the issuance of a continuing care without lodging license, the Commissioner
2 may require a provider to submit periodic reports in a form prescribed by the Commissioner to
3 monitor the status of the continuing care without lodging program.

4 **"§ 58-64A-200. Continuing care without lodging contract.**

5 (a) A continuing care without lodging contract shall include all of the following
6 provisions:

7 (1) A provision that the individual contracting with the provider may rescind the
8 contract within 30 days following the later of the execution of the contract or
9 the receipt of a disclosure statement that meets the requirements of
10 G.S. 58-64A-160.

11 (2) A provision that, if a resident dies prior to the effective start date of services,
12 or if, on account of illness, injury, or incapacity, a resident would be precluded
13 from meeting the eligibility terms of the contract, the contract is automatically
14 canceled.

15 (3) A provision that, for rescinded or canceled contracts under this subsection, the
16 resident, or the resident's legal representative, shall receive a refund of all
17 money or other consideration transferred to the provider, less (i) periodic fees
18 specified in the contract and applicable only to the period services were
19 provided to the resident; (ii) nonrefundable fees, if set out in the contract; and
20 (iii) a reasonable service charge, if set out in the contract, not to exceed the
21 greater of three thousand dollars (\$3,000) or two percent (2%) of the entrance
22 fee, if any.

23 (4) A provision that any refund due to a resident for any other cancellation or
24 termination not provided for in subdivisions (1) and (2) of this subsection shall
25 be computed in accordance with the terms of the contract.

26 (b) A continuing care without lodging contract shall specify all of the following:

27 (1) All fees required, including any entrance fee and any ongoing periodic fees.

28 (2) The services to be provided.

29 (3) The policies to be implemented if the resident cannot pay the periodic fees.

30 (4) The terms governing the refund of any portion of the entrance fee in the event
31 of death or cancellation by the resident or provider.

32 (5) The policy regarding the adjustment of periodic fees.

33 (6) Whether transportation will be provided to residents, including travel to and
34 from the continuing care retirement community for services.

35 (7) The mechanism for monitoring residents who live outside the continuing care
36 retirement community.

37 (8) The process that will be followed to establish priority if a resident wishes to
38 exercise his or her right to move into an independent living unit at the
39 continuing care retirement community.

40 (9) The process the provider will follow if it becomes necessary for the resident
41 to move into a long-term care facility.

42 (10) The policy that will be followed if a resident chooses not to move to a
43 long-term care facility when recommended by the provider.

44 (11) The policy, if any, that would entitle a resident to select placement in a
45 long-term care facility that is not part of the continuing care retirement
46 community.

47 (12) A statement describing any applicable geographical limits of the continuing
48 care without lodging program, and the policy that will be followed in the event
49 that a resident relocates to a different residence outside the geographical limits
50 covered by the continuing care without lodging program.

1 persons, does not include one or more persons acting in concert to offer
2 and provide continuing care, and is not part of an obligated group, then
3 the audited financial statements shall be a stand-alone financial audit
4 of the provider. The audited financial statements must include as
5 supplemental information, if the provider operates more than one
6 continuing care retirement community or has operations that are
7 separate and distinct from the operation of a continuing care retirement
8 community or communities under this Article, a balance sheet, a
9 statement of operations and changes in net assets or equity, and a
10 statement of cash flows for each continuing care retirement
11 community operated under this Article.

12 (2) Five-year prospective financial statements of the provider that are either
13 compiled or examined by an independent certified public accountant, that are
14 prepared on a stand-alone basis, or consolidated or combined with the same
15 persons as the audited financial statements required pursuant to subdivision
16 (1) of this subsection, and that meet all of the following requirements:

17 a. Include a summary of significant assumptions and a summary of
18 significant accounting policies.

19 b. Include, if financial projections, an identification of the hypothetical
20 assumptions and a description of the limitations on the usefulness of
21 the presentation.

22 c. Include as supplemental information for each of the five prospective
23 years all of the following:

24 1. A balance sheet.

25 2. A statement of operations and changes in net assets or equity.

26 3. A statement of cash flows for each continuing care retirement
27 community operated under this Article if the five-year
28 prospective financial statements are prepared on a consolidated
29 or combined basis, or if the provider operates more than one
30 continuing care retirement community or has operations that
31 are separate and distinct from the operation of a continuing
32 care retirement community operating under this Article.

33 d. Contain the same line items and categories as the audited financial
34 statements filed pursuant to subdivision (1) of this subsection.

35 (3) The operating reserve certification required pursuant to G.S. 58-64A-225.

36 (4) A statement disclosing all of the following:

37 a. Whether the provider, or any obligated group that the provider is a part
38 of, is not in compliance with any covenant contained in any debt
39 agreement and, if not in compliance, specifying each failure to comply
40 and the steps being taken to cure the noncompliance.

41 b. Whether the provider is aware of any existing circumstances which
42 would hinder or cause the provider, or any member of an obligated
43 group that the provider is a part of, to not be able to perform on any
44 debt agreement.

45 (5) The dates on which the semiannual meetings required pursuant to
46 G.S. 58-64A-360 were held during the provider's last fiscal year.

47 (b) If a provider is also licensed to provide continuing care without lodging, the provider
48 shall account for the related revenue and expenses generated from the continuing care without
49 lodging program separate from the provider's and continuing care retirement community's on-site
50 operations when providing the audited financial statements and five-year prospective financial
51 statements required by this section.

1 (c) A provider shall file the annual report required by this section with the Commissioner
2 within 150 days after the provider's fiscal year-end. The Commissioner may, upon a showing of
3 good cause by the provider, extend the filing date of the annual report for a reasonable period of
4 time not to exceed 30 days. If the complete annual report is not received by the due date, unless
5 granted an extension, a one thousand dollar (\$1,000) late fee shall accompany submission of the
6 annual report. If the annual report is more than 30 days past due, an additional fee of thirty dollars
7 (\$30.00) for each day over the first 30 days shall accompany submission of the annual report.
8 The Commissioner may waive the late fee upon a showing of good cause by the provider.

9 (d) The annual report shall be accompanied by a signed and certified statement by an
10 authorized individual of the provider stating that, to the best of his or her knowledge and belief,
11 the items submitted are correct in all material respects.

12 (e) Inclusion of the audited financial statements and five-year prospective financial
13 statements within the revised disclosure statement filed with the Commissioner pursuant to
14 G.S. 58-64A-175 shall satisfy the requirements of subdivisions (1) and (2) of subsection (a) of
15 this section.

16 **"§ 58-64A-210. Additional reporting.**

17 (a) If the Commissioner determines that additional information is needed to properly
18 monitor the financial condition or operations of a provider or continuing care retirement
19 community or is otherwise needed to protect the public interest, the Commissioner may require
20 a provider licensed under this Article to file any of the following:

21 (1) A monthly or quarterly unaudited financial statement of the provider and
22 continuing care retirement community in a format acceptable to the
23 Commissioner that shall be no later than 45 days after the end of the applicable
24 month or quarter.

25 (2) Any other data, financial statements, and pertinent information as the
26 Commissioner may reasonably require regarding (i) the provider, (ii) the
27 continuing care retirement community, or (iii) any affiliate, if the provider
28 relies on a contractual or financial relationship with the affiliate in order to
29 meet the financial requirements of this Article.

30 (b) A provider shall promptly notify the Commissioner and all residents in writing
31 whenever any of the following apply:

32 (1) The provider fails to maintain the operating reserve required pursuant to Part
33 9 of this Article.

34 (2) The 12-month daily average independent living unit occupancy rate at a
35 continuing care retirement community operated by the provider in this State,
36 as computed in accordance with G.S. 58-64A-260, has fallen below
37 eighty-five percent (85%) and has remained below eighty-five percent (85%)
38 for a period over 90 days, except in the case where the continuing care
39 retirement community is undergoing an expansion in accordance with this
40 Article.

41 (3) The provider, or any obligated group that the provider is a part of, is in
42 violation of any covenant contained in any debt agreement.

43 (4) The provider seeks modification, waiver, or extension of any of the provider's
44 material financial covenants or material payment terms under a mortgage loan,
45 bond indenture, or other long-term financing agreement.

46 **"§ 58-64A-215. Purchase, sale, or transfer of ownership interest of a continuing care**
47 **retirement community.**

48 (a) No permit, certificate, or license issued pursuant to this Article is transferable, and no
49 permit, certificate, or license issued pursuant to this Article has value for sale or exchange as
50 property.

1 **(b)** A provider or other owning person shall obtain approval from the Commissioner
2 before consummating any sale or transfer of any real property used in the operations of a
3 continuing care retirement community, including a sale-leaseback transaction, or any interest in
4 a continuing care retirement community, other than the sale of an independent living unit to a
5 resident or other transferee.

6 **(c)** A provider shall obtain approval from the Commissioner before consummating any
7 purchase of real property currently leased and used by the provider in the operations of a
8 continuing care retirement community. Any purchase option to be entered into by the provider
9 that requires a purchase option deposit shall only be entered into if the deposit is placed in an
10 escrow account or secured in another method acceptable to the Commissioner.

11 **(d)** A provider shall request approval of any transaction listed in subsection (b) or (c) of
12 this section by providing written notice to the Commissioner, made under oath or affirmation, at
13 least 45 days prior to consummating the transaction. The written notice required by this
14 subsection shall include all of the following:

15 **(1)** The identity and description of the persons involved in the transaction.

16 **(2)** A description of the transaction and the terms of the transaction.

17 **(3)** A description of the financial impact on the provider.

18 **(4)** If applicable, a plan for ensuring performance of existing continuing care and
19 continuing care without lodging contract obligations.

20 **(5)** Any other information reasonably required by the Commissioner.

21 **(e)** The Commissioner shall comply with the following deadlines in response to a request
22 for approval pursuant to this section:

23 **(1)** Within five business days after receipt of a request or of materials intended to
24 supplement an incomplete request, the Commissioner shall acknowledge
25 receipt in writing.

26 **(2)** Within 30 business days after receipt of a request or of materials intended to
27 supplement an incomplete request, the Commissioner shall determine if the
28 request is complete and inform the applicant in writing of the determination.
29 If the Commissioner determines that the request is incomplete, the notice to
30 the applicant shall specifically set forth and request any additional information
31 the Commissioner determines is necessary to complete the request. For
32 purposes of this subdivision, an incomplete request includes a request that
33 requires the acquiring person to obtain a certificate or license pursuant to this
34 Article.

35 **(3)** Within 30 business days after a request is deemed complete, the
36 Commissioner shall approve or deny the request for approval.

37 **(f)** The Commissioner shall approve a request for approval unless the Commissioner
38 determines that any of the following requirements are not met:

39 **(1)** The request meets all requirements of this section.

40 **(2)** None of the grounds for denial listed in G.S. 58-64A-285 apply to the
41 applicant.

42 **(3)** The transaction does not jeopardize the financial stability of the provider or
43 prejudice the interest of residents.

44 **(g)** A provider shall give written notice to all affected residents and depositors of the
45 proposed transaction within five business days after receiving approval from the Commissioner.

46 **(h)** The Commissioner may revoke or restrict the certificate or license of a provider or
47 take other administrative action pursuant to Part 10 of this Article if a provider violates the
48 provisions of this section.

49 **"§ 58-64A-220. Change of control of a provider.**

50 **(a)** No person shall enter into an agreement to merge with, or to otherwise acquire control
51 of, a provider holding a certificate or license under this Article unless the transaction is approved

1 by the Commissioner. To obtain the Commissioner's approval, the acquiring person shall file a
2 request for approval with the Commissioner.

3 (b) The request for approval required by this section shall be furnished in a form as
4 prescribed by the Commissioner, made under oath or affirmation, and shall contain the following
5 information:

6 (1) The name and address of each person by whom or on whose behalf the merger
7 or other acquisition of control is to be effected and the following additional
8 information regarding those persons:

9 a. If the person is not an individual, a report of the nature of its business
10 operations during the past five years or for a lesser period as the person
11 and any predecessors have been in existence.

12 b. A description of the business intended to be done by the person, the
13 person's affiliates, and other related parties.

14 c. A list of all individuals who are or who have been selected to become
15 directors or executive officers of the person, or who perform or will
16 perform functions appropriate to those positions.

17 d. For each individual listed pursuant to this subdivision, the person's
18 principal occupation and all offices and positions held during the past
19 five years and any conviction of crimes other than minor traffic
20 violations during the past 10 years.

21 (2) The source, nature, and amount of the consideration used or to be used in
22 effecting the merger or other acquisition of control; a description of any
23 transaction wherein funds were or are to be obtained for that purpose,
24 including any pledge of the provider's stock, or the stock of any of its
25 subsidiaries or controlling affiliates; and the identity of persons furnishing the
26 consideration. Notwithstanding this subdivision, when the source of the
27 consideration is a loan made in the lender's ordinary course of business, the
28 identity of the lender shall remain confidential, if the person filing the written
29 notice so requests.

30 (3) Fully audited financial information as to the earnings and financial condition
31 of each acquiring person for the preceding five fiscal years, or for a lesser
32 period as the acquiring person and any predecessors have been in existence,
33 and similar unaudited information as of a date not earlier than 90 days prior
34 to the filing of the written notice.

35 (4) Any plans or proposals that each acquiring person may have to liquidate the
36 provider, or any continuing care retirement community operated by the
37 provider in this State, to sell its assets or merge or consolidate it with any
38 person, or to make any other material change in its business or corporate
39 structure or management.

40 (5) A description of the effect, if any, that the merger or other acquisition of
41 control will have on the financial condition of the provider.

42 (6) A description of any change in the persons who currently provide goods and
43 services to the provider and residents, including health care and management.

44 (7) A description of any agreements made or to be made with residents which will
45 amend any continuing care or continuing care without lodging contract at the
46 time of the transfer of control.

47 (8) A description of any service or contractual obligation with residents which
48 will change as a result of the change in control.

49 (9) Any additional information as the Commissioner may prescribe as necessary
50 or appropriate for the protection of residents or in the public interest.

1 (c) The Commissioner shall comply with the following deadlines in response to request
2 for approval pursuant to this section:

3 (1) Within five business days after receipt of a request or of materials intended to
4 supplement an incomplete request, the Commissioner shall acknowledge
5 receipt in writing.

6 (2) Within 30 business days after receipt of a request or of materials intended to
7 supplement an incomplete request, the Commissioner shall determine if the
8 request is complete and inform the applicant in writing of the determination.
9 If the Commissioner determines that the request is incomplete, the notice to
10 the applicant shall specifically set forth and request any additional information
11 the Commissioner determines is necessary to complete the request.

12 (3) Within 30 business days after a request is deemed complete, the
13 Commissioner shall approve or deny the request for approval.

14 (d) The Commissioner shall approve a request for approval pursuant to this section unless
15 the Commissioner determines that any of the following requirements are not met:

16 (1) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
17 applicant.

18 (2) After the change of control, the provider will be able to satisfy the certification
19 or licensure requirements, as applicable, of this Article.

20 (3) The financial condition of any acquiring person will not jeopardize the
21 financial stability of the provider or prejudice the interest of any residents.

22 (4) Any plans or proposals that any acquiring person has to liquidate the provider,
23 or any continuing care retirement community operated by the provider in this
24 State, sell its assets, or consolidate or merge it with any person, or to make
25 any other material change in its business or corporate structure or
26 management, are fair and reasonable to residents and in the public interest.

27 (5) The competence, experience, and integrity of those persons who would
28 control the operation of the provider are such that the change of control will
29 not harm the interests of residents or of the public.

30 (e) A provider shall give written notice to all affected residents and depositors of the
31 proposed merger or other acquisition of control within five business days after the acquiring
32 person has received approval from the Commissioner.

33 (f) The Commissioner may revoke or restrict the license or certificate of a provider or
34 take other administrative action pursuant to Part 10 of this Article if a provider violates the
35 provisions of this section.

36 **"§ 58-64A-225. Operating reserve certification.**

37 (a) A provider shall maintain after the opening of a continuing care retirement
38 community an operating reserve as required by G.S. 58-64A-255.

39 (b) At the time a provider files its annual report, a provider shall file a form acceptable to
40 the Commissioner computing, reporting, and certifying all of the following:

41 (1) The 12-month daily average independent living unit occupancy rate at the
42 continuing care retirement community, or a shorter period of time that the
43 continuing care retirement community has been in operation, as of the date of
44 certification.

45 (2) The amount the provider is required to hold as its operating reserve.

46 (3) The qualifying assets, and their respective values, as defined and valued in
47 accordance with G.S. 58-64A-270, that the provider maintains for its
48 operating reserve.

49 **"§ 58-64A-230. Actuarial study.**

50 (a) A provider shall submit to the Commissioner, at least once every three years, an
51 actuarial study prepared in accordance with accepted actuarial standards of practice of each

1 continuing care retirement community operated by the provider in this State, including an
2 actuarial study of any continuing care without lodging program that the provider is licensed for
3 pursuant to this Article.

4 (b) If the actuary is unable to form a needed opinion, or if the opinion is adverse or
5 qualified, the statement of actuarial opinion and the actuarial study shall specifically state the
6 reason.

7 (c) The Commissioner may request the information required in this section more
8 frequently to assist in the determination of a possible hazardous condition.

9 (d) A provider required to file an actuarial study under this section that held a license on
10 the effective date of this section shall file an actuarial study with the Commissioner before the
11 expiration of three years following the effective date of this section. Thereafter, each provider
12 shall file its required actuarial study before the expiration of three years following the date it last
13 filed an actuarial study with the Commissioner.

14 (e) A provider required to file an actuarial study under this section that did not hold a
15 license on the effective date of this section shall file its first actuarial study within 45 days
16 following the due date for the provider's annual report for the fiscal year in which the provider
17 obtained its permanent license. Thereafter, the provider shall file its required actuarial study
18 before the expiration of three years following the date it last filed an actuarial study with the
19 Commissioner.

20 (f) A provider that only offers health care on a fee-for-service basis or only provides a
21 limited discount or limited number of free days in a long-term care facility shall be exempt, unless
22 otherwise required by the Commissioner, from the actuarial study requirement in this section.
23 Providers exempt pursuant to this subsection shall submit to the Commissioner, at least once
24 every five years, an actuarial projection of future population flows and adult care home bed and
25 nursing bed needs using appropriate mortality, morbidity, withdrawal, occupancy, and other
26 demographic assumptions and using a projection period that extends to a point at which, in the
27 actuary's professional judgment, the use of a longer period would not materially affect the results
28 and conclusions. The Commissioner may require an actuarial projection of future population
29 flows and adult care home bed and nursing bed needs sooner if there has been an increase or
30 decrease of twenty percent (20%) or more of one or more types of living units at a continuing
31 care retirement community during the provider's most recent fiscal year.

32 **"§ 58-64A-235. Notice of proposed name change.**

33 (a) A provider shall notify the Commissioner before making any change to its name or
34 the name of a continuing care retirement community operated by the provider in this State,
35 including the adoption of an assumed business name.

36 (b) Within 10 business days of submitting notification to the Commissioner of a proposed
37 change under subsection (a) of this section, the provider shall notify all residents and depositors
38 of all affected continuing care retirement communities, as applicable, of the proposed change.

39 **"§ 58-64A-240. Third-party management.**

40 (a) A provider shall notify and receive the approval of the Commissioner before entering
41 into a contract with a third party for the management of a continuing care retirement community.
42 The notification required by this section shall include a copy of the proposed contract, the
43 information required by G.S. 58-64A-160(a)(5) and G.S. 58-64A-160(a)(6) regarding the
44 proposed third-party manager, a description of the third party's experience in managing
45 continuing care retirement communities, the reason for the change in management, and, if
46 applicable, a statement as to whether there were any significant disagreements with the former
47 manager.

48 (b) The provider shall inform all residents in writing of the notice submitted to the
49 Commissioner pursuant to this section within five business days after the notice is submitted to
50 the Commissioner.

1 (c) The Commissioner shall complete the review of the notification required pursuant to
2 this section and issue written notice of approval or disapproval of the proposed third-party
3 manager within 30 days after the filing is deemed complete. A filing is deemed complete upon
4 the Commissioner's receipt of all requested information. If the Commissioner does not issue
5 written notice of disapproval of the third-party manager within 30 days after the filing is deemed
6 complete, the new management shall be deemed approved.

7 (d) The Commissioner may disapprove of the proposed third-party manager if the
8 Commissioner determines either of the following:

9 (1) The proposed third-party manager is incompetent or untrustworthy or so
10 lacking in managerial experience as to make the operation of the continuing
11 care retirement community potentially hazardous to residents.

12 (2) The proposed third-party manager is affiliated directly or indirectly through
13 ownership, control, or business relations with any person or persons whose
14 business operations are or have been marked by manipulation of assets or
15 accounts or by bad faith, to the detriment of residents, members, stockholders,
16 investors, creditors, or the public.

17 (e) The provider shall remove any third-party manager immediately upon discovery of
18 either of the following conditions, if the conditions were not disclosed in the notice to the
19 Commissioner required pursuant to this section or in any disclosure statement filed with the
20 Commissioner:

21 (1) That a manager has been convicted of any felony or pleaded nolo contendere
22 to a felony charge or has been held liable or enjoined in a civil action by final
23 judgment involving fraud, embezzlement, fraudulent conversion, or
24 misappropriation of property.

25 (2) That a manager is now, or was in the past, affiliated directly or indirectly
26 through ownership interest of ten percent (10%) or more in, or control of, any
27 business, corporation, or other entity that has been convicted of any felony or
28 pleaded nolo contendere to a felony charge or has been held liable or enjoined
29 in a civil action by final judgment involving fraud, embezzlement, fraudulent
30 conversion, or misappropriation of property.

31 **"§ 58-64A-245. Reduction in the number of living units.**

32 (a) A provider shall notify the Commissioner before reducing the number of any type of
33 living unit at a continuing care retirement community by twenty percent (20%) or more. The
34 notification required by this section shall include a statement describing the reasons for the
35 reduction and the effect, if any, on residents and the financial condition of the provider. Within
36 10 business days of notifying the Commissioner, the provider shall provide the same notice to all
37 residents.

38 (b) For the purposes of this section, the percentage in subsection (a) of this section shall
39 be based on the type of living unit being reduced.

40 "Part 9. Operating Reserve.

41 **"§ 58-64A-255. Operating reserve requirement.**

42 (a) A provider shall maintain after the opening of a continuing care retirement
43 community an operating reserve equal to fifty percent (50%) of the total operating costs of the
44 continuing care retirement community forecasted or projected for the 12-month period following
45 the period covered by the most recent disclosure statement filed with the Department.

46 (b) Once a continuing care retirement community achieves a 12-month daily average
47 independent living unit occupancy rate of ninety percent (90%) or higher, a provider shall only
48 be required to maintain an operating reserve in an amount calculated using the table below, unless
49 otherwise instructed by the Commissioner:

<u>12-Month Daily Average</u>	<u>Operating Reserve Requirement as a Percentage of</u>
<u>Independent Living Unit</u>	<u>Total Operating Costs of the Continuing Care</u>

	<u>Occupancy Rate</u>	<u>Retirement Community</u>
1		
2	90% or above.....	25.00%
3	86% to 89.9%.....	31.25%
4	83% to 85.9%.....	37.50%
5	80% to 82.9%.....	43.75%
6	Below 80%.....	50.00%

7 (c) A provider who has a 12-month daily average independent living unit occupancy rate
 8 equal to or in excess of ninety-three percent (93%) and has no long-term debt or a debt service
 9 coverage ratio in excess of 2.00 as of the provider's most recent fiscal year-end shall only be
 10 required to maintain an operating reserve equal to twelve and one-half percent (12.5%) of total
 11 operating costs of the continuing care retirement community, unless otherwise instructed by the
 12 Commissioner.

13 (d) The Commissioner may increase the amount a provider is required to maintain as its
 14 operating reserve, not to exceed fifty percent (50%) of total operating costs as calculated in
 15 accordance with G.S. 58-64A-260, for a continuing care retirement community operated by the
 16 provider or require that a provider immediately place the operating reserve on deposit with the
 17 Commissioner if the Commissioner has determined that the provider is in a hazardous condition
 18 pursuant to G.S. 58-64A-290.

19 (e) A provider shall notify all residents in writing within five business days if the
 20 Commissioner, pursuant to subsection (d) of this section, increases the amount a provider is
 21 required to maintain as its operating reserve for a continuing care retirement community operated
 22 by the provider or requires the operating reserve to be placed on deposit with the Commissioner.

23 (f) If the Commissioner requires a provider to place an operating reserve on deposit with
 24 the Commissioner, the provider shall at the same time deliver to the Commissioner a power of
 25 attorney executed by the provider's president and secretary, or other proper person or persons,
 26 authorizing the sale or transfer of said qualifying assets, or any part, for the purpose of paying
 27 any of the liabilities of the provider related to the continuing care retirement community for
 28 which the operating reserve is maintained.

29 **"§ 58-64A-260. Operating reserve calculation.**

30 (a) The five-year prospective financial statements as required by G.S. 58-64A-205(a)(2),
 31 together with the 12-month daily average independent living unit occupancy rate of the
 32 continuing care retirement community, shall serve as the basis for computing the operating
 33 reserve. A provider shall calculate and adjust, if necessary, the required operating reserve on at
 34 least a semiannual basis, including the date the operating reserve is certified in accordance with
 35 G.S. 58-64A-225.

36 (b) In addition to total operating expenses, total operating costs will include debt service
 37 consisting of principal and interest payments, along with taxes and insurance on any mortgage
 38 loan or other long-term financing, but will exclude depreciation, amortized expenses, and
 39 extraordinary items as approved by the Commissioner. If the debt service portion is accounted
 40 for by way of another reserve account, the debt service portion may be excluded upon satisfactory
 41 evidence of the existence and purpose of the other reserve account.

42 (c) A provider shall apply in writing for a determination by the Commissioner in order
 43 to exclude extraordinary items from total operating costs and shall provide documentation to
 44 support the request.

45 (d) For providers that have voluntarily and permanently discontinued entering into
 46 continuing care contracts, or who operate a continuing care retirement community where not all
 47 occupants are under continuing care contracts, the Commissioner may allow a reduced operating
 48 reserve if the Commissioner finds that the reduction is consistent with the financial protections
 49 imposed by this Article. In making this determination, the Commissioner may consider factors
 50 including the financial condition of the provider, the number of outstanding continuing care
 51 contracts, the ratio of persons under continuing care contracts to those persons who do not hold

1 a continuing care contract, and the 12-month daily average independent living unit occupancy
2 rate.

3 (e) A provider who has increased the number of independent living units available at a
4 continuing care retirement community in excess of twenty percent (20%) shall be allowed to
5 exclude the total number of independent living units in the expansion project for a period of 18
6 months after the independent living units become available for occupancy when computing the
7 operating reserve required by this Part.

8 (f) The Commissioner may allow a different calculation for a provider's required
9 operating reserve for a continuing care retirement community operated by the provider if the
10 calculation, in the opinion of the Commissioner, does not diminish the residents' protections
11 provided for by this Part.

12 **"§ 58-64A-270. Qualifying assets.**

13 (a) A provider shall fund its operating reserve with any of the following qualifying assets:

14 (1) Cash.

15 (2) Cash equivalents.

16 (3) Investment grade securities. For the purposes of this subdivision, investment
17 grade securities are any of the following:

18 a. Securities issued or directly and fully guaranteed or insured by the
19 government of the United States of America or any of its agencies or
20 instrumentalities.

21 b. Debt securities or debt instruments with a rating of BBB- or higher by
22 Standard & Poor's or Baa3 or higher by Moody's, or, if no rating of
23 Standard & Poor's or Moody's then exists, the equivalent of that rating
24 by any other nationally recognized statistical rating organization
25 appearing on the list of nationally recognized statistical rating
26 organizations maintained by the National Association of Insurance
27 Commissioners.

28 c. Investments in any fund that invests exclusively in investments of the
29 type described in sub-subdivision a. or b. of this subdivision, which
30 fund may also hold immaterial amounts of cash pending investment or
31 distribution.

32 (4) Corporate stock that is traded on a public securities exchange that can be
33 readily valued and liquidated for cash, including shares in mutual funds and
34 exchange-traded funds that hold portfolios consisting predominantly of these
35 stocks.

36 (5) Other assets considered to be acceptable to the Commissioner on a
37 case-by-case basis.

38 (b) Except as otherwise provided in this subsection, the assets maintained by the provider
39 as an operating reserve for a continuing care retirement community operated by the provider
40 under this Article may not be subject to any liens, charges, judgments, garnishments, or creditors'
41 claims and may not be hypothecated, pledged as collateral, or otherwise encumbered in any
42 manner. A provider may encumber assets held as an operating reserve as part of a security pledge
43 of assets or similar collateralization that is part of the provider's debt financing and is included
44 in the provider's debt indenture security instruments related thereto or other similar instrument.

45 (c) For the purpose of calculating the amount to be maintained by the provider to satisfy
46 its operating reserve requirement, all qualifying assets shall be valued at their current fair market
47 value.

48 **"§ 58-64A-275. Surety bond; letter of credit.**

49 (a) In lieu of funding the operating reserve with qualifying assets as set forth in
50 G.S. 58-64A-270, a provider may fund all or a portion of the operating reserve required by this
51 Part by filing with the Commissioner a surety bond or letter of credit as set forth in this section.

- 1 (1) Willfully violated any provision of this Article or of any rule or order of the
2 Commissioner.
- 3 (2) Made a material omission, misstatement, or misrepresentation, or committed
4 fraud in obtaining a permit, certificate, license, or other authorization.
- 5 (3) Engaged in any fraudulent or dishonest practices in the conduct of its business.
- 6 (4) Misappropriated, converted, or improperly withheld any monies.
- 7 (5) Failed to file an annual disclosure statement, annual report, or any other
8 materials requested by the Commissioner as required by this Article.
- 9 (6) Failed to deliver to prospective residents a disclosure statement as required by
10 this Article.
- 11 (7) Delivered to prospective residents a disclosure statement that makes a material
12 misstatement or omits a material fact and the provider, at the time of the
13 delivery of the disclosure statement, had actual knowledge of the misstatement
14 or omission.
- 15 (8) Failed to make a revised disclosure statement available to residents.
- 16 (9) Made any material misrepresentations to depositors, prospective residents, or
17 residents of a continuing care retirement community operated or to be
18 operated in this State.
- 19 (10) Failed to maintain the escrow account required under this Article, or a portion
20 of an escrow account required to be maintained under this Article has been
21 released in violation of this Article.
- 22 (11) Failed to deposit entrance fees and deposits into an escrow account when
23 required by this Article.
- 24 (12) Failed to maintain the operating reserve required under this Article, or a
25 portion of the operating reserve required to be maintained under this Article
26 has been released in violation of this Article.
- 27 (13) Violated a restriction of its permit, certificate, or license.
- 28 (14) After request by the Commissioner for an investigation or examination,
29 refused access to records or information; refused to be investigated or
30 examined or to produce its accounts, records, and files for an investigation or
31 examination; refused to give information with respect to its affairs; or refused
32 to perform any other legal obligations related to an investigation or
33 examination.
- 34 (15) Failed to fulfill obligations under continuing care and continuing care without
35 lodging contracts.
- 36 (16) Violated the provisions of G.S. 58-64A-215 related to the purchase, sale, or
37 transfer of ownership of any real property used in the operations of a
38 continuing care retirement community operated in this State, including a
39 sale-leaseback transaction, or an interest in a continuing care retirement
40 community other than a sale of a living unit to a resident or other transferee.
- 41 (17) Violated the provisions of G.S. 58-64A-220 related to the change of control
42 of an applicant or provider holding a certificate or license under this Article.
- 43 (18) Violated the provisions of G.S. 58-64A-240 related to third-party
44 management.
- 45 (19) Failed to comply with the terms of a cease-and-desist order.
- 46 (20) Has been determined by the Commissioner to be in a hazardous condition.
- 47 (b) Findings of fact in support of a denial, restriction, or revocation shall be accompanied
48 by an explicit statement of the Commissioner's understanding of the underlying facts supporting
49 the findings.
- 50 (c) If the Commissioner has good cause to believe that a provider has committed a
51 violation for which revocation could be ordered, the Commissioner may first issue a

1 cease-and-desist order. If the cease-and-desist order is not or cannot be effective in remedying
2 the violation, the Commissioner may, after notice and hearing, order that a permit, certificate, or
3 license be revoked. That revocation order may be appealed to the Superior Court of Wake County
4 in the manner provided by G.S. 58-63-35. The provider shall accept no new deposits or entrance
5 fees while the revocation order is under appeal.

6 (d) If the Commissioner issues a cease-and-desist order or restricts or revokes a provider's
7 permit, certificate, or license, the provider shall notify all residents and depositors of the
8 cease-and-desist order, restriction, or revocation within five business days.

9 (e) The Commissioner may, upon finding of changed circumstances, remove a
10 restriction.

11 (f) The revocation by the Commissioner of a certificate or license shall not release the
12 provider from obligations assumed through continuing care and continuing care without lodging
13 contracts.

14 (g) Within 20 business days after receiving a notice of revocation of a license, a provider
15 shall provide to the Commissioner and all residents a written plan detailing specifically how the
16 provider intends to continue to meet its continuing care obligations.

17 (h) A provider who has their permanent license revoked shall continue to file its annual
18 report and annual disclosure statement and pay annual fees to the Commissioner as required
19 under this Article as if the permanent license had continued in full force, but the provider shall
20 not issue any new continuing care or continuing care without lodging contracts.

21 (i) A provider who has a permit, certificate, or license revoked shall provide written
22 notice within five business days to all depositors, shall reimburse all deposits collected, and shall
23 provide documentation to the Commissioner verifying that all deposits have been returned to
24 depositors.

25 **"§ 58-64A-290. Hazardous condition.**

26 The Commissioner may consider any of the following standards to determine whether a
27 provider is in a hazardous condition:

28 (1) Whether the provider is impaired or insolvent.

29 (2) Adverse findings reported in examination reports, audit reports, and actuarial
30 opinions, reports, or summaries.

31 (3) Whether the provider has failed to establish, maintain, or has substantially
32 depleted the operating reserve required by this Article.

33 (4) The age and collectability of receivables.

34 (5) Whether an affiliate is insolvent, bankrupt, or threatened with insolvency or
35 bankruptcy, or delinquent in payment of its monetary or any other obligations
36 and which in the opinion of the Commissioner may affect the solvency of the
37 provider.

38 (6) Whether the provider, or any obligated group that the provider is a part of, is
39 not in compliance with any covenant contained in any debt agreement.

40 (7) Whether the provider is aware of any existing circumstances which would
41 hinder or cause the provider, or any member of an obligated group that the
42 applicant or provider is a part of, to not be able to perform on any debt
43 agreement.

44 (8) Contingent liabilities, pledges, or guaranties that either individually or
45 collectively involve a total amount that in the Commissioner's opinion may
46 affect a provider's solvency.

47 (9) Whether the management of a provider, including officers, directors, or any
48 other person who directly or indirectly controls the operations of an applicant,
49 provider, or continuing care retirement community, fails to possess and
50 demonstrate the competence, fitness, or reputation considered by the

1 Commissioner to be necessary to serve the provider or continuing care
2 retirement community in that position.

3 (10) Whether the management of a provider has failed to respond to the
4 Commissioner's inquiries about the condition of the applicant or provider or
5 has furnished false and misleading information in response to an inquiry by
6 the Commissioner.

7 (11) Whether the applicant or provider has failed to meet financial, disclosure
8 statement, or other filing requirements in the absence of a reason satisfactory
9 to the Commissioner.

10 (12) Whether the management of an applicant or provider has filed any false or
11 misleading financial statement, has released a false or misleading financial
12 statement to a lending institution or to the general public, or has made a false
13 or misleading entry or omitted an entry of material amount in the applicant's
14 or provider's books.

15 (13) Whether the applicant or provider has experienced or will experience in the
16 foreseeable future cash flow or liquidity problems.

17 (14) Any other finding determined by the Commissioner to be hazardous to the
18 applicant's or provider's depositors, residents, creditors, or the general public.

19 **"§ 58-64A-295. Corrective action plan.**

20 (a) If the Commissioner has determined that a provider is in a hazardous condition, the
21 Commissioner may, in lieu of taking action under G.S. 58-64A-285 or G.S. 58-64A-340, and
22 after notice and opportunity for hearing, issue an order requiring a provider to (i) submit a
23 corrective action plan within 45 days and (ii) notify all residents and depositors within five
24 business days of the Commissioner's order. The corrective action plan shall include both of the
25 following:

26 (1) Proposals of corrective actions the provider intends to take which would
27 reasonably be expected to result in the elimination of the hazardous condition.

28 (2) A date when the provider anticipates it will rectify the problems and
29 deficiencies identified by the Commissioner.

30 (b) Within 45 days after the submittal of a corrective action plan, the Commissioner shall
31 notify the provider whether the corrective action plan shall be implemented or is, in the judgment
32 of the Commissioner, unsatisfactory. If the Commissioner determines the corrective action plan
33 is unsatisfactory, the notification to the provider shall set forth the reasons for the determination
34 and may set forth proposed revisions that will render the corrective action plan satisfactory in the
35 judgment of the Commissioner. After receiving notification from the Commissioner, the provider
36 shall prepare a revised corrective action plan which may incorporate by reference any revisions
37 proposed by the Commissioner and shall submit the revised corrective action plan to the
38 Commissioner within 45 days after notification from the Commissioner. If the corrective plan is
39 approved, the provider shall immediately implement the corrective action plan, distribute a copy
40 of the plan to all residents and depositors, and begin reporting to the Commissioner on the
41 implementation and progress of the corrective action plan in accordance with a schedule and in
42 a format established by the Commissioner. Each report shall also be distributed to all residents
43 and depositors at the time the report is submitted to the Commissioner.

44 (c) If the corrective action plan is disapproved, or if a corrective action plan is not
45 submitted, the Commissioner may engage consultants to develop a corrective action plan. After
46 the corrective action plan is developed, the Commissioner shall direct the provider to implement
47 the corrective action plan and to distribute a copy of the corrective action plan to all residents
48 and depositors. Expenses incurred by the Commissioner to engage consultants shall be paid by
49 the provider.

50 (d) This section shall not be construed to delay or prevent the Commissioner from taking
51 any regulatory measures deemed necessary regarding the provider.

1 (e) The provider shall distribute its approved corrective action plan and its most recent
2 report to the Commissioner to a prospective resident at the time the provider distributes its current
3 disclosure statement pursuant to G.S. 58-64A-165. Subsections (b) and (c) of G.S. 58-64A-165
4 shall apply to the corrective action plan and the most recent report to the Commissioner required
5 to be distributed pursuant to this subsection.

6 **"§ 58-64A-300. Investigations and subpoenas.**

7 (a) The Commissioner may make public or private investigations within or outside of this
8 State as necessary to (i) determine whether any person has violated or is about to violate any
9 provision of this Article, (ii) aid in the enforcement of this Article, or (iii) verify statements
10 contained in any disclosure statement or other filing filed or delivered under this Article.

11 (b) For the purpose of any investigation or proceeding under this Article, the
12 Commissioner may require or permit any person to file a statement in writing, under oath or
13 otherwise, as to any of the facts and circumstances concerning the matter to be investigated.

14 (c) For the purpose of any investigation or proceeding under this Article, the
15 Commissioner or the Commissioner's designee has all the powers given to him for insurance
16 companies. He may administer oaths and affirmations, subpoena witnesses, compel their
17 attendance, take evidence, and require the production of any books, papers, correspondence,
18 memoranda, agreements, or other documents or records deemed relevant or material to the
19 inquiry, all of which may be enforced in the Superior Court of Wake County.

20 **"§ 58-64A-305. Civil liability.**

21 (a) A provider who enters into a binding reservation agreement, continuing care contract,
22 or continuing care without lodging contract under this Article without having first delivered a
23 disclosure statement meeting the requirements of Part 5 of this Article to the person with whom
24 the binding reservation agreement, continuing care contract, or continuing care without lodging
25 contract was entered into, or enters into a binding reservation agreement, continuing care
26 contract, or continuing care without lodging contract with a person who has relied on a disclosure
27 statement that materially misrepresents or omits to state a material fact required to be stated
28 therein or necessary in order to make the statements made therein, in light of the circumstances
29 under which they are made, not misleading, shall be liable to that person for actual damages and
30 repayment of all fees paid to the provider violating this Article, less the costs of care, services,
31 and housing provided to the resident by or on whose behalf the binding reservation agreement,
32 continuing care contract, or continuing care without lodging contract was entered into prior to
33 discovery of the violation, misstatement, or omission or the time the violation, misstatement, or
34 omission should reasonably have been discovered, together with interest thereon at the legal rate
35 for judgments, and court costs and reasonable attorney fees.

36 (b) Liability under this section exists regardless of whether the provider had actual
37 knowledge of the misstatement or omission.

38 (c) A person may not file or maintain an action under this section if the person, before
39 filing the action, received a written offer of a refund of all amounts paid to the provider, together
40 with interest at the rate established monthly by the Commissioner of Banks pursuant to
41 G.S. 24-1.1(c), less the cost of care, services, and housing provided prior to receipt of the offer,
42 and if the offer recited the provisions of this section and the recipient of the offer failed to accept
43 it within 30 days of actual receipt.

44 (d) An action may not be maintained to enforce a liability created under this Article unless
45 brought before the expiration of three years after the alleged violation.

46 **"§ 58-64A-310. Criminal penalties.**

47 (a) Any person who willfully and knowingly violates any provision of this Article is
48 guilty of a Class 1 misdemeanor. The Commissioner may refer any available evidence concerning
49 a violation of this Article, or of any rule adopted or order issued pursuant to this Article, to the
50 Attorney General or a district attorney. The Attorney General or a district attorney may institute
51 the appropriate criminal proceedings under this Article, with or without an evidentiary referral

1 from the Commissioner. Nothing in this Article limits the power of the State to punish any person
2 for any conduct that constitutes a crime under any other statute.

3 (b) Any action brought against any person shall not abate by reason of a sale or other
4 transfer of ownership of the continuing care retirement community except with the express
5 written consent of the Commissioner.

6 **"§ 58-64A-315. Forfeiture.**

7 (a) A permit, certificate, license, or other approval issued by the Commissioner pursuant
8 to this Article shall be forfeited, after notice and opportunity for hearing, when any one of the
9 following occurs:

10 (1) The provider terminates marketing a proposed continuing care retirement
11 community.

12 (2) The provider surrenders to the Commissioner its permit, certificate, or license.

13 (3) The provider sells or otherwise transfers all or part of a continuing care
14 retirement community without the Commissioner's approval in accordance
15 with G.S. 58-64A-215.

16 (4) A change occurs in the control of the provider without the Commissioner's
17 approval in accordance with G.S. 58-64A-220.

18 (5) The provider merges with another person without the Commissioner's
19 approval in accordance with G.S. 58-64A-220.

20 (6) The provider moves the continuing care retirement community from one
21 location to another without the Commissioner's prior approval.

22 (7) The provider abandons the continuing care retirement community or its
23 obligations under continuing care and continuing care without lodging
24 contracts.

25 (8) The provider is evicted from the structures that make up the continuing care
26 retirement community.

27 (9) The provider closes a continuing care retirement community.

28 (b) The provider shall notify all residents and depositors within five business days after
29 a forfeiture of a permit, certificate, or license.

30 **"§ 58-64A-320. Remedies available in cases of unlawful contracting.**

31 (a) If the Commissioner determines that a provider is or has been violating the provisions
32 of this Article, the Commissioner may, after notice and opportunity for hearing, order the
33 provider to cease entering into binding reservation agreements, continuing care contracts, and
34 continuing care without lodging contracts and make a rescission offer to any resident or depositor
35 who entered into a binding reservation agreement, continuing care contract, or continuing care
36 without lodging contract while the provider was violating the provisions of this Article in
37 accordance with the provisions of this section.

38 (b) After the Commissioner issues an order pursuant to subsection (a) of this section,
39 every binding reservation agreement, continuing care contract, or continuing care without
40 lodging contract entered into in violation of this Article may be rescinded at the election of the
41 resident or depositor without penalty.

42 (c) No resident or depositor shall have the benefit of this section who, within 30 days of
43 receipt, has refused or failed to accept an offer made in writing by the provider to rescind the
44 binding reservation agreement, continuing care contract, or continuing care without lodging
45 contract in question and to refund the full amount paid by the resident or depositor with interest
46 at the rate established monthly by the Commissioner of Banks pursuant to G.S. 24-1.1(c) on the
47 full amount paid for the binding reservation agreement, continuing care contract, or continuing
48 care without lodging contract for the period from the date of payment by the depositor or resident
49 to the date of repayment, less the cost of care, services, and housing provided, if applicable, and
50 the amount of any costs specifically incurred by the provider at the request of the resident or

1 depositor and set forth in writing, signed by both parties to the binding reservation agreement,
2 continuing care contract, or continuing care without lodging contract.

3 **"§ 58-64A-325. Administrative fines.**

4 (a) Whenever the Commissioner has reason to believe that any provider has violated any
5 of the provisions of this Article, and the violation subjects the provider's permit, certificate, or
6 license to revocation, the Commissioner may, after notice and opportunity for hearing, proceed
7 under the appropriate subsections of this section.

8 (b) If, under subsection (a) of this section, the Commissioner finds a violation of this
9 Article, the Commissioner may, in addition to or instead of revoking a permit, certificate, or
10 license, order the payment of a monetary penalty as provided in subsection (c) of this section or
11 petition the Superior Court of Wake County for an order directing payment of restitution as
12 provided in subsection (d) of this section, or both. Each day during which a violation occurs
13 constitutes a separate violation.

14 (c) If the Commissioner orders the payment of a monetary penalty pursuant to subsection
15 (b) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than
16 one thousand dollars (\$1,000) per violation. In determining the amount of the penalty, the
17 Commissioner shall consider the degree and extent of harm caused by the violation, the amount
18 of money that inured to the benefit of the provider as a result of the violation, whether the
19 violation was committed willfully, and the prior record of the provider in complying or failing to
20 comply with laws, rules, or orders applicable to the provider. The clear proceeds of the penalty
21 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
22 Payment of the civil penalty under this section shall be in addition to payment of any other
23 penalty for a violation of the criminal laws of this State.

24 (d) Upon petition of the Commissioner, the Court may order the person who committed
25 a violation specified in subsection (a) of this section to make restitution in an amount that would
26 make whole any person harmed by the violation. The petition may be made at any time and also
27 in any appeal of the Commissioner's order.

28 (e) Restitution to any State agency for extraordinary administrative expenses incurred in
29 the investigation and hearing of the violation may also be ordered by the Court in an amount that
30 would reimburse the agency for the expenses.

31 (f) Nothing in this section prevents the Commissioner from negotiating a mutually
32 acceptable agreement with any provider as to the status of the provider's permit, certificate, or
33 license or as to any civil penalty or restitution.

34 (g) Unless otherwise specifically provided for, all administrative proceedings under this
35 Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's
36 orders under this section shall be governed by G.S. 58-2-75.

37 **"§ 58-64A-330. Nonexclusive remedies.**

38 The civil, criminal, and administrative remedies available to the Commissioner pursuant to
39 this Article are not exclusive and may be sought and employed by the Commissioner, in any
40 combination, to enforce this Article.

41 **"§ 58-64A-335. Soliciting or accepting new agreements or contracts by impaired or**
42 **insolvent providers.**

43 Regardless of whether delinquency proceedings as to a provider have been or are to be
44 initiated, a provider may not actively solicit, approve the solicitation of, or enter into new binding
45 reservation agreements, continuing care contracts, or continuing care without lodging contracts
46 in this State after the provider knew, or reasonably should have known, that the provider was
47 impaired or insolvent except with the written permission of the Commissioner. The
48 Commissioner shall approve or disapprove the continued marketing of new binding reservation
49 agreements, continuing care contracts, and continuing care without lodging contracts within 15
50 days after receiving a request from a provider. If the provider has declared bankruptcy, the
51 bankruptcy court or trustee appointed by the court has jurisdiction over those matters.

1 "Part 11. Delinquency Proceedings.

2 **"§ 58-64A-340. Supervision, rehabilitation, and liquidation.**

3 (a) The Commissioner may commence a supervision proceeding pursuant to Article 30
4 of this Chapter or may apply to the Superior Court of Wake County or to the federal bankruptcy
5 court that may have previously taken jurisdiction over the provider or continuing care retirement
6 community for an order directing the Commissioner or authorizing the Commissioner to
7 rehabilitate or to liquidate a provider or continuing care retirement community in accordance
8 with Article 30 of this Chapter, if the Commissioner determines, after notice and an opportunity
9 for hearing, that any of the following apply:

10 (1) A portion of an escrow account or operating reserve required to be maintained
11 under this Article has been or is proposed to be released in violation of this
12 Article.

13 (2) A provider has been or will be unable to fully perform its obligations pursuant
14 to continuing care and continuing care without lodging contracts, or to meet
15 prospective financial data previously filed by the provider.

16 (3) A provider has failed to maintain the escrow account required under this
17 Article.

18 (4) A provider is in a hazardous condition.

19 (5) A provider is bankrupt or insolvent, or in imminent danger of becoming
20 bankrupt or insolvent.

21 (b) If the Commissioner commences a supervision proceeding, the provider shall notify
22 all residents and depositors of the proceeding within five business days.

23 (c) If an order is issued directing or authorizing the Commissioner to rehabilitate or to
24 liquidate a provider or continuing care retirement community, the Commissioner shall notify all
25 affected residents and depositors of the rehabilitation or liquidation order within five business
26 days or as otherwise directed by the Court.

27 (d) If, at any time, the Court finds, upon petition of the Commissioner, a provider, or on
28 its own motion, that the objectives of an order to rehabilitate a provider have been accomplished
29 and that the continuing care retirement community or communities owned by, or operated by,
30 the provider can be returned to the provider's management without further jeopardy to the
31 residents or depositors of the continuing care retirement community or communities, the Court
32 may, upon a full report and accounting of the conduct of the provider's affairs during the
33 rehabilitation and of the provider's current financial condition, terminate the rehabilitation and,
34 by order, return the continuing care retirement community or communities owned by, or operated
35 by, the provider, along with the assets and affairs of the provider, to the provider's management.

36 (e) When applying for an order to rehabilitate or liquidate a provider, the Commissioner
37 shall give due consideration in the application to the manner in which the welfare of persons who
38 have contracted with the provider for continuing care may be best served.

39 (f) An order for rehabilitation shall be refused or vacated if the provider posts a bond, by
40 a recognized surety authorized to do business in this State and executed in favor of the
41 Commissioner on behalf of persons who may be found entitled to a refund of entrance fees and
42 deposits from the provider or other damages in the event the provider is unable to fulfill its
43 contracts to provide continuing care, in an amount determined by the Court to be equal to the
44 reserve funding that would otherwise need to be available to fulfill the provider's obligations.

45 (g) G.S. 58-30-12 shall not apply to providers under this Article.

46 **"§ 58-64A-345. Receiverships; exception for long-term care facility beds.**

47 When the Commissioner has been appointed as a receiver under Article 30 of this Chapter
48 for a provider or a continuing care retirement community subject to this Article, the Department
49 of Health and Human Services may, notwithstanding any other provision of law, accept and
50 approve the addition of adult care home beds or nursing beds for a continuing care retirement
51 community owned by, or operated by, the provider, if it appears to the Court, upon petition of

1 the Commissioner or the provider, or on the Court's own motion, that (i) the best interests of the
2 provider or (ii) the welfare of persons who have previously contracted with the provider or may
3 contract with the provider, may be best served by the addition of adult care home beds or nursing
4 beds.

5 **"§ 58-64A-350. Contracts as preferred claims in liquidation.**

6 (a) In the event of liquidation of a provider, all continuing care and continuing care
7 without lodging contracts executed by the provider shall be deemed preferred claims against all
8 assets owned by the provider.

9 (b) Notwithstanding subsection (a) of this section, the claims of all continuing care and
10 continuing care without lodging contracts shall be subordinate to the liquidator's cost of
11 administration or any secured claim.

12 "Part 12. Residents' Right to Organization and Semiannual Meetings.

13 **"§ 58-64A-355. Right to organization.**

14 A resident living in a continuing care retirement community operated by a provider licensed
15 under this Article has the right of self-organization, the right to be represented by an individual
16 of the resident's own choosing, and the right to engage in concerted activities to keep informed
17 on the operation of the continuing care retirement community in which the resident resides or for
18 other mutual aid or protection. The right to organize includes the right to establish a residents'
19 council.

20 **"§ 58-64A-360. Semiannual meetings.**

21 (a) The board of directors or other governing body of a provider or its designated
22 representative shall hold in-person semiannual meetings with the residents of each continuing
23 care retirement community operated by the provider in this State for free discussions of subjects,
24 including, but not limited to, income, expenditures, and financial matters, trends, and problems
25 as they apply to the continuing care retirement community and discussions of proposed changes
26 in policies, programs, fees, facilities, and services. Nothing in this subsection shall prevent a
27 provider from making a semiannual meeting available via electronic means to residents of the
28 continuing care retirement community who are unable to attend in person.

29 (b) A member of the governing body of the provider, such as a board member, a general
30 partner, or a principal owner, shall attend the semiannual meetings in person. A provider may
31 apply to the Commissioner for a waiver from the requirement of this subsection based on unique
32 circumstances.

33 (c) Residents shall be entitled to at least seven days' advance notice of each meeting under
34 subsection (a) of this section. The agenda and any materials that are distributed at the meetings
35 shall remain available upon request to residents for at least 60 days after each semiannual
36 meeting.

37 (d) Whenever a state of emergency or disaster has been proclaimed in this State or for an
38 area within this State under G.S. 166A-19.20 or G.S. 166A-19.21, or whenever the President of
39 the United States has issued a major disaster declaration for the State or for an area within the
40 State under the Stafford Act, 42 U.S.C. § 5121, et seq., that directly affects the continuing care
41 retirement community, semiannual meetings required under this section may be held by
42 electronic means, including any of the following:

43 (1) Telephone.

44 (2) Video conference.

45 (3) Video broadcast.

46 (e) If a semiannual meeting is held under subsection (d) of this section, notice of the
47 method residents may attend the meeting shall be published with the notice of the meeting. The
48 meeting shall be recorded in the format in which it is conducted, including without limitation:

49 (1) A sound-only recording.

50 (2) A video recording with sound and picture.

51 (3) A digital or analog broadcast capable of being recorded.

1 (b) The provisions of G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-155, 58-2-180,
2 58-2-185, and 58-6-5 apply to this Article and are hereby incorporated by reference.

3 (c) If a provider relies on a contractual or financial relationship with another person in
4 order to meet the financial requirements of this Article, the Commissioner or the Commissioner's
5 designee may examine the person that has a contractual or financial relationship with the provider
6 to the extent necessary to ascertain the financial condition of the provider.

7 (d) A provider shall make a copy of the examination report issued by the Commissioner
8 available for inspection by all residents within 10 business days after issuance."

9 **SECTION 3.** This act becomes effective October 1, 2023, and applies to contracts
10 issued, renewed, or amended on or after that date.