

**§ 58-64A-150. Disclosure statement.**

(a) A provider shall prepare a disclosure statement for each continuing care retirement community operated or to be operated in this State that includes all of the following information:

- (1) The name, business address, and telephone number of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity.
- (2) A statement disclosing whether the provider is for-profit or nonprofit, and if nonprofit, the provision of the federal Internal Revenue Code under which the provider is exempt from the payment of income tax, and a statement disclosing whether the provider is current on all tax filings.
- (3) A statement disclosing whether the provider is privately owned or publicly owned.
- (4) A statement disclosing whether the provider is part of a multi-entity organization, and if so, both of the following:
  - a. A statement indicating whether the audited financial statements required by subdivision (36) of this subsection are prepared on a consolidated basis with all entities included and, if not, a statement indicating how the audited financial statements are prepared.
  - b. A company structure chart showing the provider's relationship with the other entities in the multi-entity organization.
- (5) A statement identifying the controlling person of the provider, if control does not exist with the provider, including the controlling person's business address.
- (6) The name, business address, education, work experience, and length of service with the provider or the provider's controlling person of (i) all officers, directors, trustees, managers, managing or general partners of the provider and, if applicable, the provider's controlling person, and any person having a ten percent (10%) or greater equity or beneficial interest in the provider or the provider's controlling person and (ii) any person who will be managing the continuing care retirement community on a day-to-day basis, and a description of the person's interest in or occupation with the provider or controlling person. If any person required to be named pursuant to this subdivision does not have a business address or uses this person's home address as the person's business address, the provider shall list the address of the provider as the person's business address. A provider shall not disclose the personal address of any person required to be named pursuant to this subdivision, unless required to do so by another provision of law or a court order.
- (7) The following information on all persons named in response to subdivisions (1), (5), and (6) of this subsection:
  - a. A description of the person's business experience, if any, in the operation or management of a continuing care retirement community.
  - b. The name and address of any professional service firm, association, trust, partnership, or corporation in which this person has, or which has in this person, a ten percent (10%) or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the provider of an aggregate value of five thousand dollars (\$5,000) or more within any fiscal year, including a description of the goods, leases, or services and the actual or probable cost to the provider, or a statement that this cost cannot presently be estimated and the reason why it cannot be presently estimated.

- c. A description of any matter in which the person (i) has been convicted of any felony or pleaded nolo contendere to a felony charge, (ii) has been held liable or enjoined in a civil action by final judgment involving fraud, embezzlement, fraudulent conversion, or misappropriation of property, or (iii) is subject to a currently effective injunctive or restrictive court order, or within the past five years, had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department.
- (8) A brief summary of the role and responsibilities of the board of directors or other governing body of the provider and, if applicable, the provider's controlling person, including how the members of the board of directors or other governing body are selected and their responsibilities.
- (9) A statement disclosing whether any related party provides, or will provide in the case of a continuing care retirement community under development, goods, leases, or services to the provider of an aggregate value of five thousand dollars (\$5,000) or more within any fiscal year, not already disclosed pursuant to subdivision (7) or (15) of this subsection, and a description of the goods, leases, or services and the actual or probable cost to the provider, or a statement that this cost cannot presently be estimated and the reason why it cannot be presently estimated.
- (10) A statement indicating whether the provider has a relationship with any religious, charitable, or other organization or person, along with the nature and extent of that relationship.
- (11) The name of any other person who will be responsible for the financial and contractual obligations of the provider not already disclosed and the extent of their responsibility.
- (12) A statement as to whether the provider is, or will be, a part of an obligated group and, if so, the names of the other persons in, or to be in, the obligated group.
- (13) A statement as to whether the provider, or any obligated group that the provider is a part of, is not in compliance with any covenant contained in any debt agreement and, if not in compliance, specifying each failure to comply and the steps being taken to cure the noncompliance.
- (14) A statement indicating whether the provider currently employs or will employ a third-party manager for the continuing care retirement community and, if so, the name of the third-party manager employed and their experience in providing management services within the continuing care retirement community industry.
- (15) If the provider is leasing or intends to lease from another person any part of the real property of the continuing care retirement community, a statement disclosing the parties to the lease, the original lease term, and the remaining term of the lease.
- (16) A statement as to whether the provider has endowment funds or has endowment funds available through a related party, that are available to provide financial aid to residents, including a description of the funds and any restrictions on their use.
- (17) The name, address, and description of the physical property or properties of the continuing care retirement community, existing or proposed, and to the extent proposed, the estimated completion date or dates, whether construction

has begun, and the contingencies subject to which construction may be deferred.

- (18) The number of existing living units, or the number of living units to be constructed, at the continuing care retirement community.
- (19) If the provider is licensed to provide continuing care at home, a description of the continuing care at home program, including the primary market area served.
- (20) The number or estimated number of residents of the continuing care retirement community to be provided services by the provider pursuant to a continuing care or continuing care at home contract.
- (21) The 12-month daily average occupancy rate at the continuing care retirement community, by living unit type, as of the provider's fiscal year-end for the past five years or for each year of the continuing care retirement community's operation if it has been in operation for less than five years.
- (22) A statement indicating whether the provider held the semiannual meetings required by G.S. 58-64A-360 during the previous fiscal year, including the dates held.
- (23) A description of any property rights of residents in the real property of the continuing care retirement community.
- (24) The services provided or proposed to be provided pursuant to continuing care and continuing care at home contracts, including the extent to which health care is furnished, and a clear statement of which services are included for specified periodic fees and which services are or will be made available for an extra charge. The description shall include a statement describing what health care services are or will be provided by the provider directly and what health care services are or will be provided through a contract with a third party.
- (25) A description of all nonancillary fees required of residents, including entrance fees, periodic fees, transfer fees, and resale fees, if any. The description shall include all of the following:
  - a. A statement of the fees that will be charged if a resident marries or otherwise increases the number of persons residing in the resident's living unit while a resident of the continuing care retirement community, and a statement of the terms concerning the entry of a spouse or other person to the continuing care retirement community and the consequences if the spouse or other person does not meet the requirements for entry.
  - b. The manner by which the provider may adjust periodic fees and the limitations on the adjustments, if any; and, if the continuing care retirement community is already in operation, a table showing the frequency, average percent increase, and average dollar amount of each increase in periodic fees for the previous five years, or for each year of the continuing care retirement community's and, if applicable, continuing care at home program's operation if it has been in operation for less than five years. If the continuing care retirement community is not yet in operation, the provider shall include a table showing the expected frequency, average percent increase, and average dollar amount of each increase in periodic fees utilized in the five-year prospective financial statements required pursuant to subdivision (37) of this subsection.

- c. A table showing the current entrance fee charges as well as the frequency, average percent increase, and average dollar amount of each increase in entrance fees for the previous five years, or for each year of the continuing care retirement community and, if applicable, continuing care at home program's operation if it has been in operation for less than five years. If the continuing care retirement community is not yet in operation, the provider shall include a table showing the expected frequency, average percent increase, and average dollar amount of each increase in entrance fees utilized in the five-year prospective financial statements required pursuant to subdivision (37) of this subsection.
- (26) For providers who offer refundable entrance fee continuing care or continuing care at home contracts, a statement disclosing:
    - a. The conditions that must be met before all or any portion of an entrance fee will be refunded.
    - b. The number and aggregate dollar amount of refundable entrance fee refunds that, as of the provider's most recent fiscal year-end:
      - 1. Will be due once all contractual conditions are met.
      - 2. Are currently due, including a disclosure of the number and aggregate dollar amount of refunds that are 30 or more days past due.
      - 3. Will be due, once all conditions are met, to residents who have permanently vacated their independent living unit and now reside in a non-independent living unit provided by the provider.
      - 4. Will be due to residents who have permanently vacated their independent living unit and now reside in a non-independent living unit provided by the provider whose former independent living unit has already been resold.
  - (27) The circumstances under which a resident will be permitted to remain a resident at the continuing care retirement community in the event of possible financial difficulties of the resident.
  - (28) The terms and conditions under which a continuing care and continuing care at home contract may be canceled by the provider, or by the resident, and the conditions, if any, under which all or any portion of the entrance fee or any other fee will be refunded in the event of cancellation of the continuing care or continuing care at home contract by the provider, or by the resident, or in the event of the death of the resident, prior to, or following, occupancy of a living unit or the start of services not already disclosed in subdivision (26) of this subsection.
  - (29) The conditions under which a living unit occupied by a resident may be made available by the provider to a different or new resident other than on the death of the prior resident.
  - (30) The conditions or circumstances under which a provider may require a resident to move from the resident's living unit to another living unit for the safety of the resident or for the good of the provider.
  - (31) The health and financial condition required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change in the health or financial condition of a person between the date of

- entering into a continuing care or continuing care at home contract and the date of initial occupancy of a living unit or the start of services.
- (32) Any age and insurance requirements for admission.
  - (33) The provisions that have been made or will be made, including the requirements of G.S. 58-64A-100 and G.S. 58-64A-245, to provide reserve funding or security to enable the provider to refund entrance fees and deposits when due and to fulfill all of its other obligations under binding reservation agreements, continuing care contracts, and continuing care at home contracts, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which these funds will be invested, and the names and experience of any person or persons who will make the investment decisions. The information provided shall also include a schedule detailing how the operating reserve for the continuing care retirement community has been calculated which shall agree with the amount calculated and reported to the Commissioner pursuant to G.S. 58-64A-270.
  - (34) A description of any expansion, renovation, or planned expansion or renovation of the continuing care retirement community.
  - (35) An explanation if the provider's most recent audited financial statements were not prepared within 150 days or if an audit opinion was received other than an unqualified opinion.
  - (36) Audited financial statements meeting the requirements of G.S. 58-64A-200.
  - (37) Five-year prospective financial statements of the provider that are either compiled or examined by an independent certified public accountant, that can be prepared on a stand-alone basis, or consolidated or combined with the same persons as the annual audited financial statements filed with the Commissioner pursuant to G.S. 58-64A-200, and that meet all of the following requirements:
    - a. Include a summary of significant assumptions and a summary of significant accounting policies.
    - b. Include, if financial projections, an identification of the hypothetical assumptions and a description of the limitations on the usefulness of the presentation.
    - c. Include as supplemental information, if prepared on a consolidated or combined basis, a consolidating or combining:
      - 1. Balance sheet.
      - 2. Statement of operations and changes in net assets or equity.
      - 3. Statement of cash flows.
    - d. Include a statement of operations as supplemental information for each continuing care retirement community operated under this Article if the provider operates more than one continuing care retirement community or has operations that are separate and distinct from the operation of a continuing care retirement community operating under this Article.
    - e. Contain the same line items and categories as the annual audited financial statements filed with the Commissioner pursuant to G.S. 58-64A-195.
    - f. For continuing care retirement communities that are under development, the prospective financial statements required by this subdivision shall include narrative disclosure detailing all significant

assumptions used in the preparation of the prospective financial statements, including all of the following:

1. Details of any long-term financing for the purchase or construction of the continuing care retirement community, including interest rate, repayment terms, loan covenants, and assets pledged.
  2. Details of any leasing agreements where the provider is leasing from another person any part of the real property of the continuing care retirement community, including the length of the lease and the remaining term.
  3. Details of any other funding sources that the provider anticipates using to fund any start-up losses or to provide reserve funds to assure full performance of the obligations of the provider under continuing care contracts.
  4. The total entrance fees to be received from or on behalf of, residents at, or prior to, commencement of operations along with anticipated accounting methods used in the recognition of revenues from and expected refunds of entrance fees.
  5. A description of any equity capital to be received by the provider.
  6. The cost of the acquisition of the continuing care retirement community or, if the continuing care retirement community is to be constructed, the estimated construction cost and cost to acquire the land.
  7. Related costs, including financing and development costs, that the provider expects to incur or become obligated for prior to the commencement of operations.
  8. The marketing and resident acquisition costs to be incurred prior to commencement of operations.
  9. A description of the assumptions used for calculating the estimated occupancy rate of the continuing care retirement community and the effect on the income of the provider of government subsidies for health care services.
- (38) A narrative describing the reasons for any material differences between (i) the five-year prospective financial statements included as a part of the disclosure statement recorded most immediately subsequent to the start of the provider's most recently completed fiscal year and (ii) the actual results of operations of the provider's most recently completed fiscal year.
- (39) A table detailing the following key financial metrics for the past three fiscal years, including the most recent fiscal year, or for each year the provider has been in operation if the provider has been in operation for less than three years, plus the next three fiscal years, based on the provider's current and prior annual audited financial statements and current five-year prospective financial statements. If there is a material year over year change in any of the key financial metrics, the provider shall include a narrative describing the reasons for the material change. For providers who are part of an obligated group, the ratios shall be computed for the provider alone and for the obligated group.
- a. Liquidity ratios:
    1. Days cash on hand ratio.
    2. Cushion ratio.

- b. Profitability ratios:
    - 1. Operating ratio.
    - 2. Net operating margin ratio.
    - 3. Adjusted net operating margin ratio.
  - c. Capital structure ratios:
    - 1. Debt service coverage ratio.
    - 2. Unrestricted cash and investments to long-term debt ratio.
    - 3. Capital expenditures as a percentage of depreciation expense ratio.
- (40) If the provider has had an actuarial study prepared within the prior three years, a statement of actuarial opinion which includes a description of the key assumptions used to prepare the actuarial study and an opinion on satisfactory actuarial balance.
- (41) A summary of the last examination report issued by the Commissioner, if any, with references to the page numbers of the examination report noting any deficiencies found by the Commissioner, and the actions taken by the provider to rectify those deficiencies, indicating in the summary where the full examination report may be inspected at the continuing care retirement community. The summary required by this subdivision shall not be required if the last examination report is more than three years old.
- (42) Any other material information concerning the continuing care retirement community, the provider, or any related party of the provider, which, if omitted, would lead a reasonable person not to enter a continuing care or continuing care at home contract with the provider.

(b) A copy of the most common continuing care and continuing care at home contract used by the provider shall be attached to each disclosure statement. To the extent multiple continuing care or continuing care at home contracts are utilized by the provider for the continuing care retirement community, a narrative shall be included within the disclosure statement listing each contract type offered and the material differences of each.

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

- (1) The date of the disclosure statement.
- (2) The last date through which the disclosure statement may be delivered.
- (3) That the delivery of the disclosure statement to a contracting party before the execution of a binding reservation agreement, continuing care contract, or continuing care at home contract is required by this Article.
- (4) That the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy of the information set out.
- (5) That the disclosure statement has been filed with, and recorded by, the North Carolina Department of Insurance in accordance with this Article.
- (6) That the disclosure statement contains all of the information required by this Article, that it is correct, in all material respects, and that knowingly delivering a disclosure statement that contains an untrue statement or omits a material fact may subject the provider to penalties as set forth in this Article.

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

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

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

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

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

(i) The Commissioner shall post the current disclosure statement for each continuing care retirement community on the Department's website in accordance with this Article. (2025-58, s. 2.)