

Part 11. Operating Reserve.

**§ 58-64A-245. Operating reserve requirement.**

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

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

| 12-Month Daily Average Independent Living Unit Occupancy Rate | Operating Reserve Requirement as a Percentage of Total Operating Costs of the Continuing Care Retirement Community |
|---|--|
| 90% or above.....   | 25.00%   |
| 86% to 89.9%.....   | 31.25%   |
| 83% to 85.9%.....   | 37.50%   |
| 80% to 82.9%.....   | 43.75%   |
| Below 80%.....  | 50.00%   |

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

(d) The Commissioner may increase the amount a provider is required to maintain as its operating reserve, not to exceed fifty percent (50%) of total operating costs as calculated in accordance with G.S. 58-64A-250, for a continuing care retirement community operated by the provider or require that a provider immediately place the operating reserve on deposit with the Commissioner if the Commissioner has determined that the provider is in a hazardous condition pursuant to G.S. 58-64A-285.

(e) A provider shall notify all residents in writing within 10 business days if the Commissioner, pursuant to subsection (d) of this section, increases the amount a provider is required to maintain as its operating reserve for a continuing care retirement community operated by the provider or requires the operating reserve to be placed on deposit with the Commissioner.

(f) If the Commissioner requires a provider to place an operating reserve on deposit with the Commissioner, the provider shall at the same time deliver to the Commissioner a power of attorney executed by the provider's president and secretary, or other proper person or persons, authorizing the sale or transfer of said qualifying assets, or any part, for the purpose of paying any of the liabilities of the provider related to the continuing care retirement community for which the operating reserve is maintained. (2025-58, s. 2.)