

§ 58-64A-40. Confidential treatment.

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

- (1) Any third-party management contract or proposed management contract provided to the Commissioner pursuant to G.S. 58-64A-55(a)(3) or G.S. 58-64A-240(a).
- (2) Any lease agreement or proposed lease agreement provided to the Commissioner pursuant to G.S. 58-64A-25 or G.S. 58-64A-55(a)(4).
- (3) Any request for approval provided to the Commissioner pursuant to G.S. 58-64A-230(d) or G.S. 58-64A-235(a).
- (4) The actuarial study, other than the statement of actuarial opinion, provided to the Commissioner pursuant to G.S. 58-64A-60(a)(3), 58-64A-90(b)(3), 58-64A-185(a)(4), or 58-64A-210.
- (5) Any market study provided to the Commissioner pursuant to G.S. 58-64A-55(a)(9) or G.S. 58-64A-185(a)(5).
- (6) Any feasibility study provided to the Commissioner pursuant to G.S. 58-64A-60(a)(2) or G.S. 58-64A-90(b)(2).
- (7) Documents, materials, or other information in the possession or control of the Commissioner that are obtained by or disclosed to the Commissioner or any other person in the course of an investigation or examination made pursuant to G.S. 58-64A-295 or G.S. 58-64A-380.
- (8) All working papers, information, documents, and copies of those materials produced by, obtained by, or disclosed to the Commissioner in connection with the financial analysis of a provider by the Commissioner.

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

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

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

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

- (1) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) or (d) of this section, with other state, federal, and international regulatory

agencies, and with state, federal, and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has verified in writing the legal authority to maintain confidentiality.

- (2) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(f) The sharing of information by the Commissioner pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this Article.

(g) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (e) of this section. (2025-58, s. 2.)