

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 145
Commerce and Insurance Committee Substitute Adopted 6/6/23

Short Title: Continuing Care Retirement Communities Act.-AB

(Public)

Sponsors:

Referred to:

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5 **SECTION 1.** Article 64 of Chapter 58 of the General Statutes is repealed.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, the following definitions shall apply:

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

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

32 (3) Actuarial study. – An analysis that includes an actuary's opinion of whether
33 the provider or applicant is in satisfactory actuarial balance in accordance with
34 accepted actuarial standards of practice.



- 1 (4) Actuary. – An individual qualified to sign an actuarial opinion in accordance
2 with the American Academy of Actuaries' qualification standards and who is
3 a member in good standing with the American Academy of Actuaries.
- 4 (5) Advertisement. – Any written, visual, or electronic information provided to
5 potential residents, or their representatives, to induce those persons to
6 subscribe to or enter into a non-binding reservation agreement, binding
7 reservation agreement, continuing care contract, or continuing care at home
8 contract.
- 9 (6) Affiliate. – A person that, directly or indirectly, through one or more other
10 persons, controls, is controlled by, or is under common control with a provider
11 or applicant.
- 12 (7) Affiliation. – Close connection to or association with another person other
13 than an affiliate or related party.
- 14 (8) Annual debt service. – The current year's interest expense plus scheduled
15 principal payments, excluding any balloon principal payment amounts and
16 any portion of the annual debt service that has been or will be funded by debt
17 for the payment of debt service.
- 18 (9) Applicant. – Any person with a pending application or other request for
19 approval under this Article.
- 20 (10) Audited financial statement. – Financial statements prepared in accordance
21 with Generally Accepted Accounting Principles.
- 22 (11) Average daily cash operating expenses. – The total expenses of a provider
23 incurred in the conduct of the provider's business over the 12-month period
24 ending on the reporting date, divided by 365. For purposes of this definition,
25 "total expenses" includes interest expense but excludes depreciation,
26 amortization, realized or unrealized nonoperating losses, bad debt expenses,
27 and other noncash expenses.
- 28 (12) Binding reservation agreement. – A binding contractual agreement between a
29 provider and a depositor that requires the payment of a deposit to reserve the
30 right to purchase continuing care, including the right to live in an independent
31 living unit at a continuing care retirement community. A purchase and sale
32 agreement for an independent living unit shall not be considered a binding
33 reservation agreement for the purposes of this Article.
- 34 (13) Cancel. – To terminate the force and effect of an agreement or contract.
- 35 (14) Continuing care. – The rendering to an individual other than an individual
36 related by blood, marriage, or adoption to the person rendering the care, of
37 housing in an independent living unit, together with related services, including
38 access, when needed, to progressive levels of health care, including either
39 assisted living care, as defined in G.S. 131D-2.1, or nursing care, as defined
40 in G.S. 131E-176, or both, regardless of whether the health care is provided at
41 the continuing care retirement community where the individual resides or
42 another location, or through a contractual relationship with a third party
43 pursuant to a contract effective for the life of the individual or for a period
44 longer than one year.
- 45 (15) Continuing care retirement community. – A retirement community consisting
46 of one or more structures where a provider renders continuing care to
47 residents. A distinct phase of development approved by the Commissioner
48 may be considered to be the continuing care retirement community when a
49 project is being developed in successive distinct phases over a period of time.
- 50 (16) Continuing care at home. – A program offered by a provider holding a
51 permanent license under this Article that provides continuing care to an

- 1 individual who is not yet receiving housing, including programs that offer an
2 individual an opportunity to move to an independent living unit at a future
3 date, if desired, according to the provider's established priority and admissions
4 policies at the continuing care retirement community sponsoring the
5 continuing care at home program.
- 6 (17) Control. – The direct or indirect ability to direct or cause the direction of the
7 management and policies of a person.
- 8 (18) Days cash on hand ratio. – The quotient obtained by dividing unrestricted cash
9 and investments by average daily cash operating expenses.
- 10 (19) Debt service coverage ratio. – The quotient obtained by dividing the sum of
11 total excess of revenues over or under expenses plus interest expense,
12 depreciation and amortization expenses, other noncash operating losses, and
13 net cash proceeds from entrance fees, minus entrance fee amortization and
14 other noncash operating gains divided by annual debt service. Entrance fees
15 received from the initial residents of independent living units at a continuing
16 care retirement community that have been financed in whole or in part with
17 the proceeds of indebtedness shall be excluded from the net proceeds from
18 entrance fees up to an amount equal to the aggregate of the principal amount
19 of the indebtedness.
- 20 (20) Deposit. – Any transfer of consideration made by a depositor to a provider to
21 reserve an independent living unit at a continuing care retirement community.
- 22 (21) Entrance fee. – The sum of any initial, amortized, or deferred transfer of
23 consideration made or to be made by, or on behalf of, an individual entering
24 into a continuing care or continuing care at home contract.
- 25 (22) Escrow agent. – Any person approved by the Commissioner to hold entrance
26 fees and deposits required to be placed in escrow under this Article.
- 27 (23) Escrow agreement. – An agreement between a provider and an escrow agent
28 by which entrance fees and deposits are held by the escrow agent until release
29 is permitted in accordance with this Article.
- 30 (24) Hazardous condition. – A present, or reasonably anticipated future condition,
31 whereby (i) a provider is unlikely to be able to meet its continuing care
32 obligations or to pay other obligations in the normal course of business or (ii)
33 the continued operation of a provider or continuing care retirement
34 community in its current condition is potentially harmful to depositors,
35 residents, creditors, or the general public.
- 36 (25) Home care services. – As defined in G.S. 131E-136.
- 37 (26) Housing. – A living unit set forth in a continuing care contract.
- 38 (27) Impairment. – A weakened financial state or condition that may affect a
39 provider's ability to pay its obligations as they come due in the normal course
40 of business.
- 41 (28) Independent living unit. – A living unit in a continuing care retirement
42 community for residents who are routinely able to carry out activities of daily
43 living, as defined in G.S. 160D-915, with minimal or no assistance. The
44 accommodations may be in the form of apartments, flats, houses, cottages,
45 condominium units, or rooms. Receiving home care or similar services,
46 regardless of whether the services are provided by the provider or another
47 person, does not preclude a living unit from being considered an independent
48 living unit.
- 49 (29) Insolvent. – A condition whereby the provider is unable to pay its obligations
50 as they come due in the normal course of business.

- 1 (30) Living unit. – An independent living unit, adult care home bed, nursing bed,
2 or other area within a continuing care retirement community set aside for the
3 exclusive use or control of one or more identified residents.
- 4 (31) Long-term care facility. – As defined in G.S. 131E-231.
- 5 (32) Manager. – A person who administers the day-to-day business operations of
6 a continuing care retirement community for a provider, subject to the policies,
7 directives, and oversight of the provider.
- 8 (33) Net operating margin ratio. – The quotient obtained by dividing total operating
9 revenues, excluding interest and dividend income, entrance fee amortization,
10 and contributions by total operating expenses, excluding interest expense,
11 depreciation and amortization expenses, and income taxes.
- 12 (34) Non-binding reservation agreement. – An agreement between a provider and
13 a depositor, which may be canceled by either party upon written notice at any
14 time, confirming a person's desire to reserve an independent living unit at a
15 continuing care retirement community on a non-binding basis.
- 16 (35) Obligated group. – One or more persons that jointly agree to be bound by a
17 financing structure containing security provisions and covenants applicable to
18 the group.
- 19 (36) Occupancy rate. – A ratio used to show the actual occupancy or utilization of
20 living units, calculated by living unit type, at a continuing care retirement
21 community for a given time period expressed as a percent. The occupancy rate
22 shall be a rolling average that is equal to 100 times the quotient obtained by
23 dividing occupied living unit days by living unit days available. For purposes
24 of this definition, "living unit days available" is the maximum number of
25 living unit days that would have been provided if all available living units
26 were filled during the given time period. The total shall equal the sum of all
27 living units, minus any living units that are unavailable for occupancy, on each
28 day for the given time period. For purposes of this definition, "occupied living
29 unit days" is the sum of each daily living unit census at the continuing care
30 retirement community for a given time period, excluding any second person
31 occupants. The total shall equal the sum of each daily census for the given
32 time period.
- 33 (37) Operating ratio. – The quotient obtained by dividing total operating expenses,
34 excluding depreciation and amortization expenses by total operating revenues,
35 excluding amortization of entrance fees and other deferred revenue.
- 36 (38) Periodic fee. – The fee charged to a resident on a monthly or other periodic
37 basis for housing, services, or both.
- 38 (39) Person. – An individual, partnership, firm, association, corporation,
39 joint-stock company, trust, any similar entity, or any combination of the
40 foregoing acting in concert.
- 41 (40) Presale. – Entering into an agreement or contract with a depositor for an
42 independent living unit that is not yet constructed or available for occupancy.
- 43 (41) Primary market area. – The area from which a continuing care retirement
44 community will likely draw the majority of its residents.
- 45 (42) Prospective financial statements. – Financial forecasts or financial
46 projections, including the summaries of significant assumptions and
47 accounting policies prepared by an independent certified public accountant.
- 48 (43) Provider. – A person that offers or undertakes to provide continuing care under
49 a continuing care or continuing care at home contract, or that represents
50 himself, herself, or itself as providing continuing care.

- 1 (44) Related party. – A person or persons that have common interests with a
2 provider as a result of ownership, control, or by contract, including affiliates,
3 principal owners, management, or their affiliates and their management and
4 members of the immediate family of the principal owners, management, or
5 their affiliates and their management.
6 (45) Resale fee. – A contractual assessment by the provider against the proceeds
7 from the sale of an independent living unit.
8 (46) Resident. – An individual who enters into a continuing care or continuing care
9 at home contract with a provider, or who is designated to be the individual to
10 receive care under the contract.
11 (47) Residents' council. – A group duly-elected by residents at a continuing care
12 retirement community to advocate for residents' rights and to serve as a liaison
13 between residents and the provider with respect to resident welfare and
14 interests.
15 (48) Satisfactory actuarial balance. – Meeting all of the required conditions, as of
16 a specified valuation date, as set forth in accordance with accepted actuarial
17 standards of practice.
18 (49) Unrestricted cash and investments. – The sum of the provider's unrestricted
19 cash, cash equivalents and investments, any provider restricted funds that are
20 available to pay debt or to pay operating expenses, any unrestricted cash, cash
21 equivalents, and investments of foundations set up solely for the benefit of the
22 provider, and the operating reserve required by G.S. 58-64A-255 as of the
23 reporting date.
24 (50) Unrestricted cash and investments to long-term debt ratio. – The quotient
25 obtained by dividing unrestricted cash and investments by total long-term
26 debt, less current portion.

27 **"§ 58-64A-10. Rulemaking authority.**

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

29 **"§ 58-64A-15. Dividends and distributions.**

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

36 **"§ 58-64A-20. Commissioner approval requirement.**

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

- 41 (1) Accepting any deposit or any other payment that is related to continuing care.
42 (2) Entering into any non-binding reservation agreement, binding reservation
43 agreement, continuing care contract, or continuing care at home contract.
44 (3) Commencing construction of a prospective continuing care retirement
45 community.
46 (4) Converting an existing building or buildings to a continuing care retirement
47 community.
48 (5) Executing new non-binding reservation agreements, binding reservation
49 agreements, continuing care contracts, or continuing care at home contracts
50 after a permit, certificate, or license issued pursuant to this Article has been
51 inactivated, surrendered, or forfeited.

- 1 (6) Assuming responsibility for continuing care and continuing care at home
2 contracts.
- 3 (7) Expanding the number of independent living units at a continuing care
4 retirement community in an amount equal to or in excess of twenty percent
5 (20%) of existing independent living units.
- 6 (8) Advertising or marketing to the general public any product similar to
7 continuing care through the use of terms "life care," "life plan," "continuing
8 care," or "guaranteed care for life," or similar terms, words, or phrases.

9 **"§ 58-64A-25. Leasing real property for a continuing care retirement community.**

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

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

- 17 (1) The terms of the proposed lease, including the proposed length of the lease
18 and any proposed purchase options.
- 19 (2) The owner of the real property and the owners' relationship to the applicant or
20 provider.
- 21 (3) The distance from any existing real property owned by the applicant or
22 provider.

23 **"§ 58-64A-30. Required electronic filings and submissions.**

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

28 **"§ 58-64A-35. Waiver or modification.**

29 The Commissioner may waive or modify any provision of this Article if the Commissioner
30 determines waiver or modification is justified based on any of the following:

- 31 (1) A state of emergency or disaster being proclaimed in this State or for an area
32 within this State under G.S. 166A-19.20 or G.S. 166A-19.21 or whenever the
33 President of the United States has issued a major disaster declaration for the
34 State or for an area within the State under the Stafford Act, 42 U.S.C. § 5121,
35 et seq.
- 36 (2) An incident beyond a provider's reasonable control, including an act of God,
37 insurrection, strike, fire, pandemic, epidemic, power outage, or systemic
38 technological failure that substantially affects the daily business operations of
39 a provider or a continuing care retirement community.

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

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

- 45 (1) Any third-party management contract or proposed management contract
46 provided to the Commissioner pursuant to G.S. 58-64A-55(a)(3) or
47 G.S. 58-64A-240(a).
- 48 (2) Any lease agreement or proposed lease agreement provided to the
49 Commissioner pursuant to G.S. 58-64A-25 or G.S. 58-64A-55(a)(4).
- 50 (3) The written notice provided to the Commissioner pursuant to
51 G.S. 58-64A-215(d).

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

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

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

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

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

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

1 confidential or privileged under the laws of the jurisdiction that is the source
2 of the document, material, or information.

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

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

9 **"§ 58-64A-45. Advertisement in conflict with disclosures and contracts.**

10 A provider may not engage in any type of advertisement for a continuing care retirement
11 community if the advertisement contains a statement or representation which materially conflicts
12 with the disclosures required under this Article or materially conflicts with any continuing care
13 or continuing care at home contract offered by the provider.

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

15 **"§ 58-64A-50. Permit to accept deposits.**

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

20 (1) The name, business address, and telephone number of the applicant.

21 (2) A proposed non-binding reservation agreement.

22 (3) A proposed escrow agreement that meets the requirements of
23 G.S. 58-64A-120.

24 (4) A description of the proposed continuing care retirement community. The
25 description shall include all of the following:

26 a. The location of the proposed continuing care retirement community.

27 b. The types of living units to be offered.

28 c. The types of continuing care contracts to be offered.

29 d. A description of the services that will be provided to residents,
30 including an indication if any services will be provided by any
31 affiliates, other related parties, or third parties.

32 e. A description of the applicant's corporate structure and experience in
33 developing or operating continuing care retirement communities,
34 including the experience of any affiliate of the applicant.

35 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-67 in
36 response to an application for a permit to accept deposits.

37 (c) The Commissioner shall approve an application for a permit to accept deposits if all
38 of the following requirements are met:

39 (1) The application complies with 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 proposed escrow agreement meets the requirements of G.S. 58-64A-120.

43 (4) The proposed escrow agent and depository are acceptable in accordance with
44 G.S. 58-64A-115.

45 (d) After the issuance of a permit to accept deposits, the applicant may do all of the
46 following:

47 (1) Disseminate materials describing the intent to develop a continuing care
48 retirement community.

49 (2) Enter into non-binding reservation agreements.

1 (3) Collect deposits in an amount not to exceed five thousand dollars (\$5,000).
2 All deposits collected shall be placed in escrow and shall only be released in
3 accordance with Part 4 of this Article.

4 (e) After the issuance of a permit to accept deposits, the Commissioner shall require the
5 provider to file periodic status reports in a form prescribed by the Commissioner.

6 **"§ 58-64A-55. Start-up certificates.**

7 (a) A person may apply for a start-up certificate by paying an application fee of two
8 thousand dollars (\$2,000) and submitting all of the following to the Commissioner for review:

9 (1) A statement signed by the applicant, under penalty of perjury, certifying that
10 to the best of the applicant's knowledge and belief, the items submitted in the
11 application are correct. If the applicant is a corporation, the chief executive
12 officer or other authorized individual shall sign the statement. If there are
13 multiple applicants, these requirements shall apply to each applicant.

14 (2) A statement disclosing any revocation or other disciplinary action taken, or in
15 the process of being taken, against a license, permit, or certificate held or
16 previously held by the applicant, any current or former affiliate, or any person
17 included or to be included in a current or proposed obligated group.

18 (3) If the applicant intends to employ a third-party management company to
19 manage the continuing care retirement community, a copy of the management
20 contract or proposed management contract, if available, along with a narrative
21 describing the proposed third-party management company's experience
22 managing continuing care retirement communities.

23 (4) If the applicant intends to lease any land or other real property to be used as
24 part or all of the proposed continuing care retirement community, the name of
25 the person from whom the land or other real property will be leased along with
26 a copy of the lease agreement, or proposed lease agreement, if available, or a
27 statement describing the applicant's intentions, including the intended length
28 of the lease, if a lease agreement or proposed lease agreement is not available.
29 If the applicant intends to lease any of the real property of the continuing care
30 retirement community and to collect entrance fees, Commissioner approval
31 must be received pursuant to G.S. 58-64A-25.

32 (5) If the applicant is not the owner of the proposed site, a statement identifying
33 the current owner and any plans the applicant has for acquiring the proposed
34 site, including details of any purchase option and requirements for a purchase
35 option deposit. If a purchase option requires a purchase option deposit, the
36 purchase option deposit shall be placed in escrow or secured in a manner
37 acceptable to the Commissioner.

38 (6) A list of all continuing care retirement communities currently or previously
39 owned, operated, managed, or developed by the applicant, or any affiliate of
40 the applicant, including any person controlling or controlled by the applicant.
41 The list shall do all of the following:

42 a. Furnish the name, address, city, and state of each continuing care
43 retirement community listed, and explain the existing or past
44 relationship to the applicant.

45 b. Specify the current status of each continuing care retirement
46 community listed and include any administrative actions or financial
47 problems that currently exist, or have existed, within three years after
48 any relationship was terminated.

49 (7) A disclosure statement that meets the requirements of G.S. 58-64A-160.

50 (8) A copy of a binding reservation agreement.

- 1 (9) A market study prepared by a person experienced in the preparation of
2 continuing care retirement community market studies.
- 3 (10) Any other data, financial statements, and pertinent information as the
4 Commissioner may require with respect to the applicant or the proposed
5 continuing care retirement community to assist in determining the market and
6 financial viability of the proposed continuing care retirement community and
7 the management capabilities of its managers and owners.
- 8 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-67 in
9 response to an application for a start-up certificate.
- 10 (c) The Commissioner shall approve an application for a start-up certificate if all of the
11 following requirements are met:
- 12 (1) The application complies with this section.
- 13 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
14 applicant.
- 15 (3) The disclosure statement meets the requirements of G.S. 58-64A-160.
- 16 (4) A market for the proposed continuing care retirement community appears to
17 exist and the continuing care retirement community appears to be financially
18 viable as evidenced by the market study and the five-year prospective
19 financial statements included in the applicant's disclosure statement.
- 20 (5) The applicant and its governing body, officers, and management are, in the
21 Commissioner's opinion, competent, experienced, and of good moral
22 character.
- 23 (d) After issuing a start-up certificate, the Commissioner shall do all of the following:
- 24 (1) Require the provider to submit periodic sales, development, and financial
25 reports in a form prescribed by the Commissioner.
- 26 (2) Post the disclosure statement of the continuing care retirement community on
27 the Department's website.
- 28 (e) After receiving a start-up certificate from the Commissioner, the applicant may do all
29 of the following:
- 30 (1) Enter into binding reservation agreements and continuing care contracts.
- 31 (2) Accept entrance fees and deposits greater than five thousand dollars (\$5,000).
32 All or any part of an entrance fee or deposit collected shall be placed in escrow
33 and shall only be released in accordance with Part 4 of this Article.
- 34 (3) Begin site preparation work.
- 35 (4) Construct model independent living units for marketing.
- 36 **§ 58-64A-60. Preliminary certificate.**
- 37 (a) A person may apply for a preliminary certificate by submitting all of the following to
38 the Commissioner for review:
- 39 (1) A statement signed by the applicant, under penalty of perjury, certifying that
40 to the best of the applicant's knowledge and belief, the items submitted in the
41 application are correct. If the applicant is a corporation, the chief executive
42 officer or other authorized individual shall sign the statement. If there are
43 multiple applicants, these requirements shall apply to each applicant.
- 44 (2) A feasibility study, prepared by an independent person experienced in
45 preparing feasibility studies for continuing care retirement communities, with
46 financial, marketing, and actuarial assumptions that projects the market and
47 financial viability of the proposed continuing care retirement community. The
48 study shall include all of the following:
- 49 a. A description of the proposed continuing care retirement community,
50 its service package, the number and type of living units, fee structure,
51 and anticipated opening date, including a detailed schedule of

- 1 projected periodic fees and a description of how the projected periodic
2 fees were computed.
- 3 b. A description of any proposed construction plans, construction
4 financing, and permanent financing for the proposed continuing care
5 retirement community.
- 6 c. A description of the anticipated source, cost, terms, and uses of all
7 funds to be used in the real property acquisition, construction,
8 marketing, and operation of the proposed continuing care retirement
9 community, including all of the following:
- 10 1. A description of all debt to be incurred by the applicant,
11 including the source, anticipated terms, and costs of financing.
- 12 2. A description of the source and amount of equity to be
13 contributed by the applicant.
- 14 3. A description of the source and amount of all other funds,
15 including entrance fees, that will be necessary to complete and
16 operate the proposed continuing care retirement community.
- 17 4. A statement itemizing all estimated project costs, including the
18 real property costs, the cost of acquiring or designing and
19 constructing the proposed continuing care retirement
20 community, and all similar costs that the applicant expects to
21 incur prior to the commencement of operation. This
22 itemization shall identify all costs related to the proposed
23 continuing care retirement community, including financing
24 expenses, resident acquisition costs, marketing costs, and
25 furniture and equipment.
- 26 5. An estimate of any reserves required by financing and the
27 operating reserve required pursuant to Part 9 of this Article.
- 28 6. An estimate of the amount of funds, if any, that will be
29 necessary to fund start-up losses and to otherwise provide
30 additional financial resources in an amount sufficient to ensure
31 full performance by the applicant of its continuing care
32 contract obligations.
- 33 d. An analysis of the potential market for the applicant's proposed
34 continuing care retirement community, addressing all of the following:
- 35 1. The population, household growth, age distribution, household
36 income, household tenure, and resale housing values within the
37 primary market area.
- 38 2. A demand analysis of the range of likely target consumers
39 within the primary market area as well as estimated penetration
40 rates.
- 41 3. An economic analysis of current market conditions and trends
42 that can impact the feasibility of the proposed continuing care
43 retirement community, positively or negatively, including real
44 estate, income, employment, and the general economic outlook
45 for the primary market area and surrounding areas.
- 46 4. An analysis of the project location and immediate area in
47 relationship to key variables, including accessibility,
48 employment, and proximity to health care, retail, and other
49 services.
- 50 5. The types of services and amenities desired and the forms of
51 ownership or interest in real property preferred.

- 1 living units, reserved by a nonrefundable deposit equal to the periodic
2 fee for at least two months for proposed continuing care retirement
3 communities that have no entrance fee.
- 4 c. Confirmation of one hundred thousand dollars (\$100,000) placed on
5 deposit with the Commissioner, if the applicant (i) does not collect
6 presale entrance fees or deposits in an amount equal to at least ten
7 percent (10%) of the entrance fee, or (ii) does not collect presale
8 entrance fees or deposits and does not collect nonrefundable deposits
9 equal to the periodic fee of at least two months. This deposit is subject
10 to the following requirements:
- 11 1. The deposit shall only be returned to the applicant upon the
12 issuance of a permanent license.
- 13 2. The deposit shall be made in accordance with G.S. 58-5-20.
- 14 3. The deposit shall automatically be forfeited if the applicant
15 does not obtain a permanent license within five years after the
16 issuance of a preliminary certificate. Forfeited deposits shall
17 be remitted to the Civil Penalty and Forfeiture Fund in
18 accordance with G.S. 115C-457.2.
- 19 (6) If applicable, confirmation that commitments have been secured for
20 construction financing and long-term financing or that a documented plan
21 acceptable to the Commissioner has been adopted by the applicant for
22 long-term financing.
- 23 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-67 in
24 response to an application for a preliminary certificate.
- 25 (c) The Commissioner shall approve an application for a preliminary certificate if all of
26 the following requirements are met:
- 27 (1) The application complies with this section.
- 28 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
29 applicant.
- 30 (3) The feasibility study meets all of the following requirements:
- 31 a. Includes in the prospective financial statements all obligations and
32 liabilities to be undertaken by the applicant pursuant to the terms of
33 the proposed continuing care contracts.
- 34 b. Demonstrates that the anticipated sources of funds to finance and
35 operate the proposed continuing care retirement community are equal
36 to or greater than the anticipated uses of funds to (i) construct or
37 acquire the proposed continuing care retirement community and (ii)
38 fund start-up losses and provide sufficient resources to ensure full
39 performance of the applicant's continuing care contract obligations.
- 40 c. Demonstrates that the continuing care retirement community is
41 financially feasible.
- 42 (4) A market for the continuing care retirement community appears to exist, based
43 on data that meets all of the following requirements:
- 44 a. Is specific to the proposed continuing care retirement community.
- 45 b. Considers existing and proposed competition in the primary market
46 area.
- 47 c. Demonstrates the existence of a market for the age, marital status,
48 number, population trends, net worth, home values, and income of the
49 potential residents.
- 50 d. Demonstrates that the rate of penetration in the proposed market area
51 is within acceptable industry ranges.

- 1 (5) The actuarial study, if applicable, projects that the proposed continuing care
2 retirement community will be in satisfactory actuarial balance within a
3 reasonable period of time after achieving stabilized occupancy, as determined
4 by the Commissioner, or if no actuarial study is required, the actuarial
5 projection of future population flows demonstrates a sufficient number of
6 adult care home beds and nursing beds to meet the future needs of residents
7 and the future contractual obligations of the applicant, as determined by the
8 Commissioner.
- 9 (6) The applicant has met one of the requirements in subdivision (5) of subsection
10 (a) of this section.
- 11 (7) If applicable, the applicant has secured commitments for construction
12 financing and long-term financing or that a documented plan acceptable to the
13 Commissioner has been adopted by the applicant for long-term financing.
- 14 (8) The applicant demonstrates an ability to comply with this Article and to
15 provide continuing care as proposed and meet all financial obligations related
16 to its operations.
- 17 (d) After issuing a preliminary certificate, the Commissioner shall do both of the
18 following:
- 19 (1) Require the provider to submit periodic sales, development, and financial
20 reports in a form prescribed by the Commissioner.
- 21 (2) Post the disclosure statement of the continuing care retirement community on
22 the Department's website.
- 23 (e) After receiving a preliminary certificate from the Commissioner, the applicant may
24 do both of the following:
- 25 (1) Construct a continuing care retirement community.
- 26 (2) Convert an existing structure or structures into a continuing care retirement
27 community.

28 **"§ 58-64A-65. Permanent license.**

- 29 (a) A person may apply for a permanent license by submitting all of the following to the
30 Commissioner for review:
- 31 (1) A statement signed by the applicant, under penalty of perjury, certifying that
32 to the best of the applicant's knowledge and belief, the items submitted in the
33 application are correct. If the applicant is a corporation, the chief executive
34 officer or other authorized individual shall sign the statement. If there are
35 multiple applicants, these requirements shall apply to each applicant.
- 36 (2) An updated disclosure statement that meets the requirements of
37 G.S. 58-64A-160.
- 38 (3) Confirmation that the applicant has established a plan to have health care
39 available to residents promised in continuing care contracts upon opening,
40 either by the applicant directly, or through contractual agreements.
- 41 (4) Confirmation that the applicant has signed binding reservation agreements or
42 continuing care contracts of at least seventy percent (70%) of the new
43 independent living units, reserved by a deposit equal to at least ten percent
44 (10%) of the entrance fee or by a nonrefundable deposit equal to the periodic
45 fee of at least two months for proposed continuing care retirement
46 communities that have no entrance fee.
- 47 (5) Confirmation that the applicant has long-term financing in place, and if the
48 applicant is leasing the land or other real property of the continuing care
49 retirement community, confirmation that the lease is in place and, if
50 applicable, that the lease has been approved by the Commissioner pursuant to
51 G.S. 58-64A-25.

- 1 (6) Confirmation that the applicant is in compliance with all other state, federal,
2 municipal, and county laws and regulations. If the applicant is not in
3 compliance, the applicant shall include a statement that describes the nature
4 of the deficiency.
- 5 (7) A statement concerning any litigation, orders, judgments, or decrees which
6 may involve or impact the applicant or proposed continuing care retirement
7 community.
- 8 (8) Evidence that the applicant has in place the operating reserve required by Part
9 9 of this Article.
- 10 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-67 in
11 response to an application for a permanent license.
- 12 (c) The Commissioner shall approve an application for a permanent license if all of the
13 following requirements are met:
- 14 (1) The application complies with this section.
- 15 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
16 applicant.
- 17 (d) After receiving a permanent license from the Commissioner, the provider may do
18 both of the following:
- 19 (1) Open the continuing care retirement community.
- 20 (2) Provide continuing care.
- 21 (e) If the Commissioner determines that the requirements of subsection (c) of this section
22 are not met, the Commissioner may do either of the following:
- 23 (1) Deny the application.
- 24 (2) Issue a restricted permanent license with an explanation of (i) the restrictions
25 established by the Commissioner under subsection (f) of this section and (ii)
26 the conditions the applicant must satisfy to qualify for a permanent license.
- 27 (f) After receiving a restricted permanent license from the Commissioner, the provider
28 may operate a continuing care retirement community under restrictions established by the
29 Commissioner until the Commissioner issues a permanent license. When the Commissioner
30 issues a restricted permanent license, the applicant shall inform all depositors and residents within
31 10 business days of (i) all restrictions imposed by the restricted permanent license and (ii) all
32 conditions that the provider must satisfy to qualify for a permanent license.
- 33 (g) After issuing a permanent license or restricted permanent license, the Commissioner
34 shall do both of the following:
- 35 (1) Require the provider to submit periodic occupancy reports and financial
36 statements in a form prescribed by the Commissioner.
- 37 (2) Post the disclosure statement of the continuing care retirement community on
38 the Department's website.
- 39 (h) A permanent license or restricted permanent license shall be valid for as long as the
40 Commissioner determines that the provider continues to meet the requirements of this Article.

41 **"§ 58-64A-67. Review schedule.**

42 The Commissioner shall comply with the following schedule in response to an application
43 for (i) a permit to accept deposits, (ii) a start-up certificate, (iii) a preliminary certificate, (iv) a
44 permanent license, (v) an expansion, (vi) a continuing care at home license, (vii) an expansion
45 notification, and (viii) a request for approval pursuant to G.S. 58-64A-215, 58-64A-220, or
46 58-64A-240:

- 47 (1) Within five business days after receipt of an application, a notification, a
48 request for approval, or of materials intended to supplement an incomplete
49 application, notification, or request for approval, the Commissioner shall
50 acknowledge receipt in writing.

- 1 (2) Within 10 business days after receipt of an application for a permit to accept
2 deposits, permanent license, and an expansion notification, or of materials
3 intended to supplement an incomplete application or expansion notification,
4 and, within 30 days after receipt of an application for a start-up certificate, a
5 preliminary certificate, a continuing care at home license, and an expansion,
6 or a request for approval, or of materials intended to supplement an incomplete
7 application or request for approval, the Commissioner shall determine if the
8 application, notification, or request for approval is complete and inform the
9 applicant in writing of the determination. If the Commissioner determines that
10 the application, notification, or request for approval is incomplete, the notice
11 to the applicant shall specifically set forth and request any additional
12 information the Commissioner determines is necessary to complete the
13 application, notification, or request for approval.
- 14 (3) When the Commissioner determines an application, notification, or request
15 for approval is complete, the Commissioner shall approve or deny the
16 application, notification, or request for approval as follows:
- 17 a. Within five business days for a permit to accept deposits and an
18 expansion notification.
- 19 b. Within 30 days for a start-up certificate, permanent license, continuing
20 care at home license, expansion, and a request for approval.
- 21 c. Within 45 days for a preliminary certificate.

22 **"§ 58-64A-70. Expiration of a permit to accept deposits and start-up certificate.**

23 (a) A permit to accept deposits and a start-up certificate issued pursuant to this Article
24 expires 36 months after issuance.

25 (b) A provider issued a permit to accept deposits or a start-up certificate may request an
26 extension of the permit or certificate. The request for extension shall be made in writing and
27 include both of the following:

- 28 (1) The reasons why the provider has not applied for a start-up certificate or
29 preliminary certificate, as applicable.
- 30 (2) The estimated date the provider expects to file the start-up certificate
31 application or the preliminary certificate application, as applicable.

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

- 34 (1) If the Commissioner determines there is satisfactory cause for the delay, the
35 Commissioner may extend the permit to accept deposits or a start-up
36 certificate for up to one year and may, in the Commissioner's discretion,
37 require the provider to update information previously filed pursuant to
38 G.S. 58-64A-50 or G.S. 58-64A-55 before approving any extension. There is
39 no limit to the number of extensions that may be granted by the
40 Commissioner.
- 41 (2) If the Commissioner determines that there is no satisfactory cause for the
42 delay, the Commissioner shall instruct the escrow agent to refund to the
43 depositors all deposits held in escrow, plus any interest that may be due under
44 the terms of the non-binding reservation agreement, binding reservation
45 agreement, or continuing care contract paid by the depositors.

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

49 **"§ 58-64A-72. Material changes or deviations in information.**

- 1 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
2 provider.
- 3 (3) The proposed escrow agreement meets the requirements of G.S. 58-64A-120.
- 4 (4) The proposed escrow agent and depository are acceptable in accordance with
5 G.S. 58-64A-115.
- 6 (e) After the Commissioner approves the expansion notification, the provider shall
7 submit periodic sales and development reports to the Commissioner in a form prescribed by the
8 Commissioner.
- 9 (f) After the Commissioner approves the expansion notification, the provider may do all
10 of the following:
- 11 (1) Disseminate materials, including advertisements, describing the intent to
12 expand the number of independent living units at the continuing care
13 retirement community.
- 14 (2) Enter into non-binding reservation agreements, binding reservation
15 agreements, and continuing care contracts for the proposed independent living
16 units.
- 17 (3) Collect entrance fees and deposits for the proposed independent living units.
18 All deposits collected shall be placed in escrow and shall only be released in
19 accordance with Part 4 of this Article, unless otherwise exempted by the
20 Commissioner.

21 **"§ 58-64A-80. Expansion application.**

- 22 (a) Prior to commencing construction of an expansion of a continuing care retirement
23 community that is twenty percent (20%) or more of existing independent living units, a provider
24 shall do both of the following:
- 25 (1) Receive Commissioner approval of an expansion notification pursuant to
26 G.S. 58-64A-75.
- 27 (2) Apply to the Commissioner for approval to commence construction.
- 28 (b) The application required by this section shall include all of the following:
- 29 (1) An application fee of one thousand dollars (\$1,000).
- 30 (2) A feasibility study, prepared by an independent person experienced in
31 preparing feasibility studies for continuing care retirement, with financial,
32 marketing, and actuarial assumptions that projects the market and financial
33 viability of the proposed expansion. The study shall include all of the
34 following items:
- 35 a. A description of the applicant's proposed expansion project, including
36 the number of independent living units being added, fee structure, a
37 description of how the projected fees were computed, and the
38 anticipated project time line.
- 39 b. A description of the construction plans, construction financing, and
40 permanent financing for the proposed expansion project, including all
41 of the following:
- 42 1. A description of all debt to be incurred by the applicant,
43 including the source, anticipated terms, and costs of financing.
- 44 2. A description of the source and amount of any equity to be
45 contributed by the applicant.
- 46 3. A description of the source and amount of all other funds,
47 including entrance fees, that will be necessary to complete and
48 operate the proposed expansion.
- 49 4. A statement itemizing all estimated project costs, including the
50 real property costs, the cost of designing and constructing the
51 proposed expansion, and all similar costs that the applicant

- 1 and adult care home bed and nursing bed needs. An actuarial projection of
2 future population flows and adult home care bed and nursing bed needs shall
3 use (i) appropriate mortality, morbidity, withdrawal, occupancy, and other
4 demographic assumptions and (ii) a projection period that extends to a point
5 at which, in the actuary's professional judgment, the use of a longer period
6 would not materially affect the results and conclusions.
- 7 (4) An updated disclosure statement that meets the requirements of
8 G.S. 58-64A-160.
- 9 (5) If applicable, confirmation that the applicant has secured commitments for
10 construction financing and long-term financing or that a documented plan
11 acceptable to the Commissioner has been adopted by the applicant for
12 long-term financing.
- 13 (6) If the expansion includes any land or other real property that is to be leased,
14 confirmation, if applicable, that the lease has been approved by the
15 Commissioner pursuant to G.S. 58-64A-25.
- 16 (7) Any other data and pertinent information as the Commissioner may
17 reasonably require with respect to the applicant or the continuing care
18 retirement community to determine the feasibility of the expansion.
- 19 (c) The Commissioner shall comply with the review schedule in G.S. 58-64A-67 in
20 response to an expansion application.
- 21 (d) The Commissioner shall approve the expansion application if all of the following
22 requirements are met:
- 23 (1) The expansion application complies with this section.
- 24 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
25 applicant.
- 26 (3) The feasibility study meets all of the following requirements:
- 27 a. Includes in the prospective financial statements all current obligations
28 and liabilities of the applicant as well as those to be undertaken by the
29 applicant.
- 30 b. Demonstrates that the expansion is financially viable and will not have
31 an unreasonably adverse effect on the financial ability of the applicant
32 to furnish continuing care.
- 33 c. Demonstrates the existence of a market for the proposed expansion
34 based on reliable data, which meets all of the following requirements:
- 35 1. Is specific to the continuing care retirement community.
- 36 2. Considers existing and proposed competition in the primary
37 market area.
- 38 3. Demonstrates that the rate of penetration in the proposed
39 market area is within acceptable industry ranges.
- 40 (4) The applicant demonstrates the ability to provide continuing care and meet all
41 financial and contractual obligations related to its operations, including the
42 financial requirements of this Article.
- 43 (5) The applicant, if applicable, has secured commitments for construction
44 financing and long-term financing or that a documented plan acceptable to the
45 Commissioner has been adopted by the applicant for long-term financing.
- 46 (6) The actuarial study, if applicable, projects that the continuing care retirement
47 community will be in satisfactory actuarial balance within a reasonable period
48 of time once stabilized occupancy of the expansion is achieved, or if no
49 actuarial study is required, the actuarial projection of future population flows
50 demonstrates a sufficient number of adult care home beds and nursing beds to
51 meet the needs of residents and the contractual obligations of the applicant.

1 (e) After the Commissioner approves the expansion application, the provider shall submit
2 periodic sales and development reports to the Commissioner in a form prescribed by the
3 Commissioner to monitor the expansion project.

4 (f) After the Commissioner approves the expansion application, the provider may
5 commence construction of the new independent living units at the continuing care retirement
6 community as proposed and, upon completion of construction and the satisfaction of all other
7 legal requirements, open the expansion and provide continuing care to the residents of the new
8 independent living units.

9 **"§ 58-64A-85. Expansion entrance fees and deposits.**

10 All entrance fees and deposits collected for independent living units in an expansion requiring
11 Commissioner approval under this Part shall be placed in an escrow account in accordance with
12 Part 4 of this Article unless otherwise exempted by the Commissioner.

13 "Part 4. Escrow Account.

14 **"§ 58-64A-115. Escrow account required.**

15 All entrance fees and deposits, when required by this Article, shall be deposited by the
16 provider in an escrow account and shall be maintained in a segregated account without any
17 commingling with other funds, including any funds or accounts owned by the provider. The
18 escrow agent and all terms governing an escrow account shall be approved in advance by the
19 Commissioner.

20 **"§ 58-64A-120. Escrow agreement requirements.**

21 The escrow agreement between the provider and the escrow agent shall be in writing and
22 include, in addition to any other provisions required by law, all of the following:

- 23 (1) A provision requiring that all funds received shall be placed into the escrow
24 account in accordance with G.S. 58-64A-130.
- 25 (2) A provision for investment of escrow account funds in a manner consistent
26 with G.S. 58-64A-135.
- 27 (3) A provision regarding the payment of interest earned on the funds held in the
28 escrow account in the manner specified in G.S. 58-64A-140.
- 29 (4) A provision for refunds to depositors in the manner specified by
30 G.S. 58-64A-150.
- 31 (5) A provision that any refund or release of escrow account funds be performed
32 in the manner specified in G.S. 58-64A-150 and G.S. 58-64A-155, including
33 a statement as to whom payment of interest earned on the funds will be made.
- 34 (6) A statement that the purpose of the escrow agreement is to protect residents
35 and prospective residents.
- 36 (7) The amount of the escrow agent fee.
- 37 (8) A provision that funds deposited shall not be subject to any liens or charges
38 by the escrow agent.
- 39 (9) A provision requiring the escrow agent to furnish the provider with a monthly
40 statement indicating the amount of any disbursements from or deposits to the
41 escrow account and the condition of the account during the monthly period
42 covered by the statement.
- 43 (10) A provision requiring the escrow agent to furnish to the Commissioner, upon
44 the request of the Commissioner, periodic reports, including the monthly
45 statement required pursuant to subdivision (9) of this section, certifying the
46 amount of funds held on deposit.
- 47 (11) A provision requiring the escrow agent to furnish to a depositor, upon the
48 request of a depositor, a statement indicating the depositor's portion of the
49 escrow account.
- 50 (12) Representations by the escrow agent that it is not and shall not be during the
51 term of the escrow agreement an affiliate or other related party of the provider.

1 a lender to the provider, or a fiduciary for any lender or bondholder for the
2 provider, unless approved by the Commissioner.

3 **"§ 58-64A-125. Change to escrow agreement.**

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

6 **"§ 58-64A-130. Entrance fee and deposit delivery to the escrow agent.**

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

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

14 **"§ 58-64A-135. Investment of funds in escrow.**

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

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

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

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

21 (b) Any investment shall not diminish the funds held in escrow below the amounts
22 required by this Article.

23 **"§ 58-64A-140. Earnings from funds in escrow.**

24 (a) Interest, income, and other gains derived from funds held in an escrow account shall
25 not be released or distributed from the escrow account except upon written approval of the
26 Commissioner.

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

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

35 **"§ 58-64A-145. Escrowed funds not to be used as collateral.**

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

42 **"§ 58-64A-150. Refunds of escrowed entrance fees and deposits.**

43 (a) An escrow agent shall refund to a depositor, or their legal representative, all amounts
44 required by the depositor's non-binding reservation agreement, binding reservation agreement,
45 or continuing care contract upon receiving written notice from the provider of any of the
46 following:

47 (1) The death of a depositor.

48 (2) Nonacceptance by the provider.

49 (3) Voluntary cancellation.

50 (4) The denial of an application pursuant to this Article.

51 (5) Written notice from the Commissioner.

1 (b) Refunds required in subsection (a) of this section shall be paid within 10 business
2 days after the escrow agent receives the written notice described in subsection (a) of this section.

3 (c) If voluntary cancellation of a continuing care contract or a binding reservation
4 agreement occurs after construction of the continuing care retirement community or expansion
5 of a continuing care retirement community has begun, but prior to the independent living unit's
6 initial occupancy, the refund may be delayed until another depositor has reserved a similar
7 independent living unit and paid the necessary entrance fee or deposit. This delay shall not exceed
8 one year, unless the time period is extended by the Commissioner upon a showing of good cause
9 by the provider or escrow agent.

10 **"§ 58-64A-155. Release of escrowed entrance fees and deposits.**

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

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

19 (2) The provider has received a commitment for any permanent mortgage loan or
20 other long-term financing of the proposed continuing care retirement
21 community or expansion, and more than seventy percent (70%) of any
22 conditions of the commitment prior to disbursement of funds thereunder have
23 been satisfied.

24 (3) For a proposed continuing care retirement community, the aggregate entrance
25 fees received or receivable by the provider pursuant to binding reservation
26 agreements and continuing care contracts, plus the anticipated proceeds of any
27 first mortgage loan or other long-term financing commitment, plus any equity
28 being contributed by the provider, are equal to not less than ninety percent
29 (90%) of the following amount: (i) the aggregate cost of constructing or
30 purchasing, equipping, and furnishing the proposed continuing care retirement
31 community, plus (ii) not less than ninety percent (90%) of the funds estimated
32 to be necessary to fund start-up losses and to reasonably assure full
33 performance of the provider's future continuing care obligations, as reported
34 in the statement of cash flows required by G.S. 58-64A-160.

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

38 (1) The provider has presold at least seventy percent (70%) of the proposed
39 independent living units, having received a minimum ten percent (10%)
40 deposit of each applicable entrance fee and maintains at least seventy-five
41 percent (75%) of each entrance fee or deposit received in escrow, or has
42 maintained an independent living unit occupancy minimum of seventy percent
43 (70%) for at least 60 days. Any independent living unit for which a refund is
44 pending shall not be counted toward the seventy percent (70%) requirement.

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

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

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

- 1 cost to the provider, or a statement that this cost cannot presently be
2 estimated and the reason why it cannot be presently estimated.
- 3 c. A description of any matter in which the person (i) has been convicted
4 of any felony or pleaded nolo contendere to a felony charge; (ii) has
5 been held liable or enjoined in a civil action by final judgment
6 involving fraud, embezzlement, fraudulent conversion, or
7 misappropriation of property; or (iii) is subject to a currently effective
8 injunctive or restrictive court order, or within the past five years, had
9 any state or federal license or permit suspended or revoked as a result
10 of an action brought by a governmental agency or department.
- 11 d. The extent to which any person will be responsible for the financial
12 and contractual obligations of the provider.
- 13 (7) A statement disclosing whether any affiliate or other related party provides,
14 or will provide in the case of a continuing care retirement community under
15 development, goods, leases, or services to the provider of an aggregate value
16 of five thousand dollars (\$5,000) or more within any fiscal year, not already
17 disclosed pursuant to subdivisions (4) or (6) of this subsection, and a
18 description of the goods, leases, or services and the actual or probable cost to
19 the provider, or a statement that this cost cannot presently be estimated and
20 the reason why it cannot be presently estimated.
- 21 (8) A statement indicating whether the provider is affiliated with any religious,
22 charitable, or other organization or person, and the extent and a description of
23 the affiliation.
- 24 (9) The name of any other person who will be responsible for the financial and
25 contractual obligations of the provider not already disclosed and the extent of
26 their responsibility.
- 27 (10) A statement as to whether the provider is, or will be, a part of an obligated
28 group and, if so, the names of the other persons in, or to be in, the obligated
29 group.
- 30 (11) A statement as to whether the provider or continuing care retirement
31 community has endowment funds, or has endowment funds available through
32 an affiliate, that are available to provide financial aid to residents, including a
33 description of the funds and any restrictions on their use.
- 34 (12) The name, address, and description of the physical property or properties of
35 the continuing care retirement community, existing or proposed, and to the
36 extent proposed, the estimated completion date or dates, whether construction
37 has begun, and the contingencies subject to which construction may be
38 deferred.
- 39 (13) The number of existing living units, or the number of living units to be
40 constructed, at the continuing care retirement community.
- 41 (14) If the provider is licensed to provide continuing care at home, a description of
42 the continuing care at home program, including the primary market area
43 served.
- 44 (15) The number or estimated number of residents of the continuing care retirement
45 community to be provided services by the provider pursuant to a continuing
46 care or continuing care at home contract.
- 47 (16) The 12-month daily average occupancy rate at the continuing care retirement
48 community, by living unit type, as of the provider's fiscal year-end for the past
49 five years or for each year of the continuing care retirement community's
50 operation if it has been operated for less than five years.

- 1 (17) A description of any property rights of residents in the continuing care
2 retirement community.
- 3 (18) The services provided or proposed to be provided pursuant to continuing care
4 and continuing care at home contracts, including the extent to which health
5 care is furnished, and a clear statement of which services are included for
6 specified periodic fees and which services are or will be made available for an
7 extra charge. The description shall include a statement describing what health
8 care services are or will be provided by the provider directly and what health
9 care services are or will be provided through a contract with a third party.
- 10 (19) A description of all nonancillary fees required of residents, including entrance
11 fees, periodic fees, transfer fees, and resale fees, if any. The description shall
12 include all of the following:
- 13 a. A statement of the fees that will be charged if a resident marries or
14 otherwise increases the number of persons residing in the resident's
15 living unit while a resident of the continuing care retirement
16 community and a statement of the terms concerning the entry of a
17 spouse or other person to the continuing care retirement community
18 and the consequences if the spouse or other person does not meet the
19 requirements for entry.
- 20 b. The manner by which the provider may adjust periodic fees and the
21 limitations on the adjustments, if any; and, if the continuing care
22 retirement community is already in operation, a table showing the
23 frequency and average percent increase and average dollar amount of
24 each increase in periodic fees for the previous five years, or for each
25 year of the continuing care retirement community's operation if it has
26 been operated for less than five years. If the continuing care retirement
27 community is not yet in operation, the provider shall include a table
28 showing the expected frequency and average percent increase and
29 average dollar amount of each increase in periodic fees utilized in the
30 five-year prospective financial statements required pursuant to
31 subdivision (29) of this subsection.
- 32 (20) The circumstances under which a resident will be permitted to remain a
33 resident at the continuing care retirement community in the event of possible
34 financial difficulties of the resident.
- 35 (21) The terms and conditions under which a continuing care and continuing care
36 at home contract may be canceled by the provider, or by the resident, and the
37 conditions, if any, under which all or any portion of the entrance fee or any
38 other fee will be refunded in the event of cancellation of the continuing care
39 or continuing care at home contract by the provider, or by the resident, or in
40 the event of the death of the resident, prior to, or following, occupancy of a
41 living unit or the start of services.
- 42 (22) The conditions under which a living unit occupied by a resident may be made
43 available by the provider to a different or new resident other than on the death
44 of the prior resident.
- 45 (23) The conditions or circumstances under which a provider may require a
46 resident to move from his or her living unit to another living unit for the safety
47 of the resident or for the good of the provider.
- 48 (24) The health and financial condition required for an individual to be accepted as
49 a resident and to continue as a resident once accepted, including the effect of
50 any change in the health or financial condition of a person between the date

- 1 of entering into a continuing care or continuing care at home contract and the
2 date of initial occupancy of a living unit or the start of services.
- 3 (25) Any age and insurance requirements for admission.
- 4 (26) The provisions that have been made or will be made, including the
5 requirements of G.S. 58-64A-115 and G.S. 58-64A-255, to provide reserve
6 funding or security to enable the provider to perform its obligations under
7 continuing care and continuing care at home contracts, including the
8 establishment of escrow accounts, trusts, or reserve funds, together with the
9 manner in which these funds will be invested, and the names and experience
10 of any person or persons who will make the investment decisions. The
11 information provided shall also include a schedule detailing how the operating
12 reserve for the continuing care retirement community has been calculated
13 which shall agree with the amount calculated and reported to the
14 Commissioner pursuant to G.S. 58-64A-260.
- 15 (27) A description of any expansion, renovation, or planned expansion or
16 renovation of the continuing care retirement community.
- 17 (28) Audited financial statements meeting the requirements of
18 G.S. 58-64A-205(a)(1).
- 19 (29) Five-year prospective financial statements meeting the requirements of
20 G.S. 58-64A-205(a)(2). For continuing care retirement communities that are
21 under development, the prospective financial statements required by this
22 subdivision shall include narrative disclosure detailing all significant
23 assumptions used in the preparation of the prospective financial statements,
24 including all of the following:
- 25 a. Details of any long-term financing for the purchase or construction of
26 the continuing care retirement community, including interest rate,
27 repayment terms, loan covenants, and assets pledged.
- 28 b. Details of any leasing agreements where the provider is leasing from
29 another person any part of the real property of the continuing care
30 retirement community, including the length of the lease and the
31 remaining term.
- 32 c. Details of any other funding sources that the provider anticipates using
33 to fund any start-up losses or to provide reserve funds to assure full
34 performance of the obligations of the provider under continuing care
35 contracts.
- 36 d. The total entrance fees to be received from or on behalf of residents at,
37 or prior to, commencement of operations along with anticipated
38 accounting methods used in the recognition of revenues from and
39 expected refunds of entrance fees.
- 40 e. A description of any equity capital to be received by the provider.
- 41 f. The cost of the acquisition of the continuing care retirement
42 community or, if the continuing care retirement community is to be
43 constructed, the estimated construction cost and cost to acquire the
44 land.
- 45 g. Related costs, including financing and development costs, that the
46 provider expects to incur or become obligated for prior to the
47 commencement of operations.
- 48 h. The marketing and resident acquisition costs to be incurred prior to
49 commencement of operations.
- 50 i. A description of the assumptions used for calculating the estimated
51 occupancy rate of the continuing care retirement community and the

- 1 effect on the income of the provider of government subsidies for health
2 care services.
- 3 (30) A narrative describing the reasons for any material differences between (i) the
4 five-year prospective financial statements included as a part of the disclosure
5 statement recorded most immediately subsequent to the start of the provider's
6 most recently completed fiscal year and (ii) the actual results of operations of
7 the provider's most recently completed fiscal year.
- 8 (31) After the opening of a continuing care retirement community, a table detailing
9 the following key financial metrics for the past three fiscal years, including
10 the most recent fiscal year, or for each year of the continuing care retirement
11 community's operation if it has been operated for less than three years, plus
12 the next three fiscal years, based on the provider's current and prior annual
13 audited financial statements and current five-year prospective financial
14 statements filed with the Commissioner pursuant to G.S. 58-64A-205. If there
15 is a material year over year change in any of the key financial metrics, the
16 provider shall include a narrative describing the reasons for the material
17 change. The table shall include all of the following:
- 18 a. Unrestricted cash and investments.
19 b. Average daily cash operating expenses.
20 c. Days cash on hand ratio.
21 d. Total long-term debt.
22 e. Unrestricted cash and investments to long-term debt ratio.
23 f. Annual building and land lease payments.
24 g. Annual debt service, including both principal and interest.
25 h. Debt service coverage ratio.
26 i. Operating ratio.
27 j. Net operating margin ratio.
- 28 (32) If the provider has had an actuarial study prepared within the prior three years,
29 a statement of actuarial opinion which includes a description of the key
30 assumptions used to prepare the actuarial study and an opinion on satisfactory
31 actuarial balance.
- 32 (33) A summary of the last examination report issued by the Commissioner, if any,
33 with references to the page numbers of the examination report noting any
34 deficiencies found by the Commissioner, and the actions taken by the provider
35 to rectify those deficiencies, indicating in the summary where the full
36 examination report may be inspected at the continuing care retirement
37 community. The summary required by this subdivision shall not be required
38 if the last examination report is more than three years old.
- 39 (34) Any other material information concerning the continuing care retirement
40 community or the provider which, if omitted, would lead a reasonable person
41 not to enter a continuing care or continuing care at home contract with the
42 provider.
- 43 (b) A copy of the most common continuing care and continuing care at home contract
44 used by the provider shall be attached to each disclosure statement. To the extent multiple
45 continuing care or continuing care at home contracts are utilized by the provider for the
46 continuing care retirement community, a narrative shall be included within the disclosure
47 statement listing each contract type offered and the material differences of each.
- 48 (c) The cover page of the disclosure statement shall state, in a prominent location and in
49 boldface type, all of the following:
- 50 (1) The date of the disclosure statement.
51 (2) The last date through which the disclosure statement may be delivered.

1 (3) That the delivery of the disclosure statement to a contracting party before the
2 execution of a binding reservation agreement, continuing care contract, or
3 continuing care at home contract is required by this Article.

4 (4) That the disclosure statement has not been reviewed or approved by any
5 government agency or representative to ensure accuracy of the information set
6 out.

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

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

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

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

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

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

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

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

28 **"§ 58-64A-165. Required delivery of disclosure statement.**

29 (a) A provider shall deliver a current disclosure statement meeting the requirements of
30 G.S. 58-64A-160 to the person or the person's legal representative with whom a binding
31 reservation agreement, continuing care contract, or continuing care at home contract is to be
32 entered into. The disclosure statement shall be delivered no later than the earliest of the following
33 occurrences: (i) the execution of a binding reservation agreement, continuing care contract, or
34 continuing care at home contract, or (ii) the transfer of any money or other consideration, other
35 than a non-binding reservation agreement deposit, to a provider by or on behalf of a prospective
36 resident. For purposes of this subsection, a disclosure statement is current if (i) it is dated within
37 one year plus 160 days prior to the date of delivery and (ii) it is the most recently recorded
38 disclosure statement on file with the Commissioner.

39 (b) The delivery required by this section may be by electronic means if the provider
40 obtains the written consent of the person with whom the binding reservation agreement,
41 continuing care contract, or continuing care at home contract is to be entered into. For the
42 purposes of this subsection, delivery by electronic means shall mean delivery by either of the
43 following methods:

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

46 (2) Both of the following:

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

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

4 (c) After receiving delivery of a disclosure statement pursuant to this section, a person
5 shall sign an acknowledgement of receipt. The acknowledgement shall include (i) the date, (ii)
6 the name of the person signing, and (iii) the date of the disclosure statement received, including
7 the date revised, if any. The provider shall provide a copy of the acknowledgement of receipt to
8 the person signing and shall maintain the original. The acknowledgement of receipt required by
9 this subsection may be received, given, and maintained in either electronic or paper form.

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

13 **"§ 58-64A-170. Annual revised disclosure statements.**

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

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

27 (c) The Commissioner may, upon a showing of good cause by the provider, extend the
28 due date of the annual disclosure statement revision for a reasonable period of time not to exceed
29 30 days.

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

36 **"§ 58-64A-175. Other revisions to disclosure statement.**

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

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

45 (c) Within five business days of receipt of a revised disclosure statement pursuant to this
46 section, the Commissioner shall notify the provider in writing that the revised disclosure
47 statement has been received and recorded and is considered to be the current disclosure statement
48 for purposes of this Article. After sending this notification, the Commissioner shall post the
49 revised disclosure statement on the Department's website within five business days. After
50 receiving the Commissioner's notification, a provider revising its disclosure statement pursuant

1 to this section shall make the revised disclosure statement available to all residents either in
2 electronic or paper form.

3 "Part 6. Binding Reservation Agreement and Continuing Care Contract.

4 **"§ 58-64A-185. Binding reservation agreement.**

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

- 6 (1) A provision that the depositor entering into the agreement may rescind the
7 agreement within 30 days following the later of the following occurrences: (i)
8 the execution of the agreement or (ii) the receipt of a disclosure statement that
9 meets the requirements of G.S. 58-64A-160.
- 10 (2) A provision that the agreement shall be automatically canceled if either of the
11 following occurs: (i) a depositor dies before signing a continuing care contract
12 or (ii) a depositor would be precluded from signing a continuing care contract
13 and occupying a living unit in the continuing care retirement community under
14 the terms of a continuing care contract due to illness, injury, or incapacity.
- 15 (3) A provision that, if an agreement is rescinded, automatically canceled, or
16 otherwise canceled by the depositor, the depositor shall receive a refund of all
17 money or other consideration transferred to the provider. All of the following
18 shall be deducted from the depositor's refund:
- 19 a. Nonstandard costs specifically incurred by the provider at the request
20 of the depositor and described in the agreement.
- 21 b. Any nonrefundable fees specifically set forth in the agreement.
- 22 c. Any service charge specifically set forth in the agreement that shall
23 not exceed (i) three thousand dollars (\$3,000), (ii) two percent (2%) of
24 the entrance fee, or (iii) the amount of consideration transferred to the
25 provider by the depositor. An agreement shall not include a provision
26 that imposes a service charge based on (i) a cancellation caused by the
27 failure of a provider to meet its obligations under the agreement, or (ii)
28 the failure of the provider to obtain a permanent license in accordance
29 with this Article.
- 30 (4) A provision that any refund due to a depositor for a cancellation or termination
31 for reasons not provided for in this section shall be computed in accordance
32 with the terms of the agreement.

33 **"§ 58-64A-190. Continuing care contract.**

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

- 35 (1) A provision that the resident contracting with the provider may rescind the
36 contract within 30 days following the later of (i) the execution of the contract
37 or (ii) the receipt of a disclosure statement that meets the requirements of
38 G.S. 58-64A-160, and a resident to whom the contract pertains is not required
39 to move into the continuing care retirement community before the expiration
40 of the 30-day period.
- 41 (2) A provision that, if a resident dies before occupying a living unit in the
42 continuing care retirement community, or if, on account of illness, injury, or
43 incapacity, a resident would be precluded from occupying a living unit in the
44 continuing care retirement community under the terms of the contract, the
45 contract is automatically canceled.
- 46 (3) A provision that, for rescinded or canceled contracts under this subsection and
47 contracts canceled before a living unit is initially available for occupancy by
48 the first resident of a living unit, the resident or the resident's legal
49 representative shall receive a refund of all money or other consideration
50 transferred to the provider, less (i) periodic fees specified in the contract and
51 applicable only to the period a living unit was actually occupied by the

1 resident; (ii) those nonstandard costs specifically incurred by the provider at
2 the request of the resident and described in the contract or any contract
3 amendment signed by the resident; (iii) nonrefundable fees, if set out in the
4 contract; and (iv) a reasonable service charge, if set out in the contract, not to
5 exceed the greater of three thousand dollars (\$3,000) or two percent (2%) of
6 the entrance fee. In no event shall the service charge exceed the amount of
7 consideration transferred to the provider by the resident, or a service charge
8 be assessed due to the termination of the contract because of the failure of the
9 provider to meet its obligations under the contract, or upon the failure of the
10 provider to obtain a permanent license in accordance with this Article.

11 (4) A provision that any refund due to a resident for a cancellation or termination
12 for reasons not provided for in this section shall be computed in accordance
13 with the terms of the contract.

14 (b) A continuing care contract shall specify all of the following:

15 (1) All fees required of residents, including any entrance fee and any ongoing
16 periodic fees.

17 (2) The services to be provided.

18 (3) The policy regarding changing the resident's living unit, if necessary, for the
19 protection of the health or safety of the resident or the general and economic
20 welfare of other continuing care retirement community residents.

21 (4) The policies to be implemented if the resident cannot pay the periodic fees.

22 (5) The terms governing the refund of any portion of the entrance fee in the event
23 of death or cancellation by the resident or provider.

24 (6) The policy regarding increasing the periodic fees.

25 (7) A description of the living unit.

26 (8) Any property rights of the resident.

27 (9) The policy, if any, regarding periodic fee adjustments if the resident is absent
28 from the continuing care retirement community.

29 (10) Any requirement that the resident maintain long-term care insurance or apply
30 for Medicaid benefits or any other public assistance program.

31 (c) A continuing care contract shall include the following notice immediately above the
32 contract signature line and be in type that is boldfaced, capitalized, underlined, or otherwise set
33 out from the surrounding written material so as to be conspicuous:

34
35 "NOTICE

36
37 Because the authority to enter into continuing care contracts granted by the North Carolina
38 Department of Insurance is neither a guarantee of performance by the provider nor an
39 endorsement of any continuing care contract provision, prospective residents must carefully
40 consider the risks, benefits, and costs before signing a continuing care contract and are strongly
41 encouraged to seek financial and legal advice before doing so."

42 "Part 7. Continuing Care at Home.

43 "§ 58-64A-195. Application.

44 (a) No person shall arrange or provide continuing care at home unless licensed by the
45 Commissioner pursuant to this Article. A provider who has obtained a permanent license or a
46 restricted permanent license pursuant to this Article may submit an application to the
47 Commissioner for a continuing care at home license. The application shall include all of the
48 following:

49 (1) An application fee of five hundred dollars (\$500.00).

- 1 (2) A draft amended disclosure statement containing a description of the proposed
2 continuing care at home program, including the primary market area to be
3 served, the types of services to be provided, and the fees to be charged.
- 4 (3) A copy of the proposed continuing care at home contract.
- 5 (4) An actuarial study prepared in accordance with accepted actuarial standards
6 of practice which estimates when the continuing care at home program is
7 projected to be in satisfactory actuarial balance. Providers who do not collect
8 entrance fees or some other type of up-front prepayment of costs are exempt
9 from this requirement and shall only be required to submit an actuarial
10 projection of future population flows and adult care home bed and nursing bed
11 needs using appropriate mortality, morbidity, withdrawal, occupancy, and
12 other demographic assumptions and using a projection period that extends to
13 a point at which, in the actuary's professional judgment, the use of a longer
14 period would not materially affect the results and conclusions.
- 15 (5) A market study prepared by a person experienced in the preparation of market
16 studies for continuing care at home or similar programs that demonstrates
17 sufficient interest in a continuing care at home program.
- 18 (6) Prospective financial statements prepared by a certified public accountant that
19 show the financial impact of providing continuing care at home on the
20 provider and the continuing care retirement community. The prospective
21 financial statements shall include a statement of activities reporting the
22 revenue and expense details for providing continuing care at home, as well as
23 the impact the program will have on the operations of the provider and the
24 continuing care retirement community, including the operating reserve.
- 25 (7) Evidence of the license required under Part 3 of Article 6 of Chapter 131E of
26 the General Statutes to provide home care services, or a contract with a
27 licensed home care agency for the provision of home care services to be
28 provided to residents under the continuing care at home program.
- 29 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-67 in
30 response to an application for a continuing care at home license.
- 31 (c) The Commissioner shall approve an application for a continuing care at home license
32 if all of the following requirements are met:
- 33 (1) The application complies with this section.
- 34 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
35 applicant.
- 36 (3) The applicant is able to provide continuing care at home as proposed.
- 37 (4) There is sufficient consumer interest in the continuing care at home program
38 proposed by the applicant, as evidenced by the market study.
- 39 (5) The program proposed by the applicant will not have a detrimental impact on
40 the overall operations of the applicant and continuing care retirement
41 community, as determined by the Commissioner.
- 42 (d) After receiving a continuing care at home license, the provider may arrange or provide
43 continuing care at home and shall file an amended disclosure statement with the Commissioner
44 which contains the information regarding continuing care at home required by G.S. 58-64A-160.
- 45 (e) After the issuance of a continuing care at home license, the Commissioner shall
46 require a provider to submit periodic reports in a form prescribed by the Commissioner to monitor
47 the status of the continuing care at home program.
- 48 **"§ 58-64A-200. Continuing care at home contract.**
- 49 (a) A continuing care at home contract shall include all of the following provisions:
- 50 (1) A provision that the resident contracting with the provider may rescind the
51 contract within 30 days following the later of (i) the execution of the contract

1 carefully consider the risks, benefits, and costs before signing a continuing care at home contract
2 and are strongly encouraged to seek financial and legal advice before doing so."

3 "Part 8. Reporting, Financial, and Operating Requirements.

4 "§ 58-64A-205. Annual report.

5 (a) A provider that has obtained a permanent license or restricted permanent license
6 under this Article shall submit an annual report to the Commissioner. The annual report shall be
7 in a form prescribed by the Commissioner and shall include the following information:

8 (1) Audited financial statements of the provider's most recent fiscal year that shall
9 be prepared in accordance with one of the following:

10 a. If a provider is required by generally accepted accounting principles
11 to have their financial statements consolidated with other persons, the
12 consolidated financial statements shall include a consolidating balance
13 sheet, a consolidating statement of operations and changes in net assets
14 or equity, and a consolidating statement of cash flows as supplemental
15 information to the audited consolidated financial statements. This
16 supplemental information shall include a balance sheet, a statement of
17 operations and changes in net assets or equity, and a statement of cash
18 flows for each continuing care retirement community operated under
19 this Article.

20 b. If the provider includes one or more persons acting in concert to offer
21 and provide continuing care, the audited financial statements shall be
22 combined and shall include a combining balance sheet, a combining
23 statement of operations and changes in net assets or equity, and a
24 combining statement of cash flows as supplemental information to the
25 audited combined financial statements. This supplemental information
26 shall include a balance sheet, a statement of operations and changes in
27 net assets or equity, and a statement of cash flows for each continuing
28 care retirement community operated under this Article.

29 c. If a provider is part of an obligated group, the audited financial
30 statements shall be either consolidated or combined with the other
31 members of the obligated group and shall include a combining or
32 consolidating balance sheet, a combining or consolidating statement
33 of operations and changes in net assets or equity, and a combining or
34 consolidating statement of cash flows as supplemental information to
35 the audited combined or consolidated financial statements. This
36 supplemental information shall include a balance sheet, a statement of
37 operations and changes in net assets or equity, and a statement of cash
38 flows for each continuing care retirement community operated under
39 this Article.

40 d. If the provider is not required by generally accepted accounting
41 principles to have their financial statements consolidated with other
42 persons, does not include one or more persons acting in concert to offer
43 and provide continuing care, and is not part of an obligated group, then
44 the audited financial statements shall be a stand-alone financial audit
45 of the provider. The audited financial statements must include as
46 supplemental information, if the provider operates more than one
47 continuing care retirement community or has operations that are
48 separate and distinct from the operation of a continuing care retirement
49 community or communities under this Article, a balance sheet, a
50 statement of operations and changes in net assets or equity, and a

1 statement of cash flows for each continuing care retirement
2 community operated under this Article.

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

8 a. Include a summary of significant assumptions and a summary of
9 significant accounting policies.

10 b. Include, if financial projections, an identification of the hypothetical
11 assumptions and a description of the limitations on the usefulness of
12 the presentation.

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

15 1. A balance sheet.

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

17 3. A statement of cash flows for each continuing care retirement
18 community operated under this Article if the five-year
19 prospective financial statements are prepared on a consolidated
20 or combined basis, or if the provider operates more than one
21 continuing care retirement community or has operations that
22 are separate and distinct from the operation of a continuing
23 care retirement community operating under this Article.

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

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

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

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

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

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

38 (b) If a provider is also licensed to provide continuing care at home, the provider shall
39 account for the related revenue and expenses generated from the continuing care at home program
40 separate from the provider's and continuing care retirement community's other operations when
41 providing the audited financial statements and five-year prospective financial statements required
42 by this section.

43 (c) A provider shall file the annual report required by this section with the Commissioner
44 within 150 days after the provider's fiscal year-end. The Commissioner may, upon a showing of
45 good cause by the provider, extend the filing date of the annual report for a reasonable period of
46 time not to exceed 30 days. If the complete annual report is not received by the due date and no
47 extension has been granted, a one thousand dollar (\$1,000) late fee shall accompany submission
48 of the annual report. If the annual report is more than 30 days past due, an additional fee of thirty
49 dollars (\$30.00) for each day over the first 30 days shall accompany submission of the annual
50 report. The Commissioner may waive the late fee upon a showing of good cause by the provider.

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

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

8 **"§ 58-64A-210. Additional reporting.**

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

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

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

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

24 (1) The provider fails to maintain the operating reserve required pursuant to Part
25 9 of this Article.

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

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

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

38 **"§ 58-64A-215. Purchase, sale, or transfer of ownership interest of a continuing care**
39 **retirement community.**

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

43 (b) A provider or any other person who owns the real property used in the operations of
44 a continuing care retirement community shall obtain approval from the Commissioner before
45 consummating any sale or transfer of any real property used in the operations of a continuing
46 care retirement community, including a sale-leaseback transaction, or any interest in a continuing
47 care retirement community, other than the sale of an independent living unit to a resident or other
48 transferee.

49 (c) A provider shall obtain approval from the Commissioner before consummating any
50 purchase of real property currently leased and used by the provider in the operations of a
51 continuing care retirement community. Any purchase option to be entered into by the provider

1 that requires a purchase option deposit shall only be entered into if the deposit is placed in an
2 escrow account or secured in another method acceptable to the Commissioner.

3 (d) A provider shall request approval of any transaction listed in subsection (b) or (c) of
4 this section by filing a request for approval with the Commissioner, made under oath or
5 affirmation, at least 45 days prior to consummating the transaction. The request for approval
6 required by this subsection shall include all of the following:

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

8 (2) A description of the transaction and the terms of the transaction.

9 (3) A description of the financial impact on the applicant.

10 (4) If applicable, a plan for ensuring performance of existing continuing care and
11 continuing care at home contract obligations.

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

13 (e) The Commissioner shall comply with the review schedule in G.S. 58-64A-67 in
14 response to a request for approval of this section.

15 (f) The Commissioner shall approve a request for approval if all of the following
16 requirements are met:

17 (1) The request complies with 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 transaction does not jeopardize the financial stability of the applicant or
21 prejudice the interest of residents.

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

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

27 **§ 58-64A-220. Change of control of a provider.**

28 (a) No person shall enter into an agreement to merge with, or to otherwise acquire control
29 of a provider holding a certificate or license under this Article unless the transaction is approved
30 by the Commissioner. To obtain the Commissioner's approval, the acquiring person shall file a
31 request for approval with the Commissioner.

32 (b) The request for approval required by this section shall be in a form prescribed by the
33 Commissioner, made under oath or affirmation, and shall contain all of the following
34 information:

35 (1) The name and address of each acquiring person and the following additional
36 information regarding those persons:

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

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

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

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

49 (2) The source, nature, and amount of the consideration used or to be used in
50 effecting the merger or other acquisition of control; a description of any
51 transaction wherein funds were or are to be obtained for that purpose.

- 1 including any pledge of the provider's stock, or the stock of any of its
2 subsidiaries or controlling affiliates; and the identity of persons providing the
3 consideration.
- 4 (3) Fully audited financial information as to the earnings and financial condition
5 of each acquiring person for the preceding five fiscal years, or for a lesser
6 period as the acquiring person and any predecessors have been in existence,
7 and similar unaudited information as of a date not earlier than 90 days prior
8 to the filing of the written notice.
- 9 (4) Any plans or proposals that each acquiring person may have to liquidate the
10 provider, or any continuing care retirement community operated by the
11 provider in this State, to sell its assets or merge or consolidate it with any
12 person, or to make any other material change in its business or corporate
13 structure or management.
- 14 (5) A description of the effect, if any, that the merger or other acquisition of
15 control will have on the financial condition of the provider.
- 16 (6) A description of any change in the provision of goods and services to the
17 provider and residents.
- 18 (7) A description of any agreements made or to be made with residents which will
19 amend any continuing care or continuing care at home contract at the time of
20 the transfer of control.
- 21 (8) A description of any service or contractual obligation with residents which
22 will change as a result of the change in control.
- 23 (9) Any additional information as the Commissioner may require as necessary or
24 appropriate for the protection of residents or in the public interest.
- 25 (c) The Commissioner shall comply with the review schedule in G.S. 58-64A-67 in
26 response to a request for approval pursuant to this section.
- 27 (d) The Commissioner shall approve a request for approval pursuant to this section if all
28 of the following requirements are met:
- 29 (1) The request for approval complies with this section.
- 30 (2) None of the grounds for denial listed in G.S. 58-64A-285 apply to the
31 applicant.
- 32 (3) After the change of control, the provider will be able to satisfy the certification
33 or licensure requirements, as applicable, in this Article.
- 34 (4) The financial condition of any acquiring person will not jeopardize the
35 financial stability of the provider or prejudice the interest of any residents.
- 36 (5) Any plans or proposals that any acquiring person has to liquidate the provider,
37 or any continuing care retirement community operated by the provider in this
38 State, sell its assets, or consolidate or merge it with any person, or to make
39 any other material change in its business or corporate structure or
40 management, are fair and reasonable to residents and in the public interest.
- 41 (6) The competence, experience, and integrity of those persons who would
42 control the operation of the provider are such that the change of control will
43 not harm the interests of residents or of the public.
- 44 (e) A provider shall give written notice to all affected residents and depositors of the
45 proposed merger or other acquisition of control within five business days after the acquiring
46 person has received approval from the Commissioner.
- 47 (f) The Commissioner may revoke or restrict the license or certificate of a provider or
48 take other administrative action pursuant to Part 10 of this Article if a provider violates the
49 provisions of this section.
- 50 **§ 58-64A-225. Operating reserve certification.**

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

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

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

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

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

13 **"§ 58-64A-230. Actuarial study.**

14 (a) A provider shall submit to the Commissioner, at least once every three years, an
15 actuarial study prepared in accordance with accepted actuarial standards of practice for each
16 continuing care retirement community operated by the provider in this State and any continuing
17 care at home program that the provider is licensed for pursuant to this Article.

18 (b) If the actuary is unable to form an opinion, or if the opinion is adverse or qualified,
19 the statement of actuarial opinion and the actuarial study shall specifically state the reason.

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

22 (d) A provider required to file an actuarial study under this section that held a license on
23 the effective date of this section shall file an actuarial study with the Commissioner before the
24 expiration of three years following the effective date of this section. Thereafter, each provider
25 shall file its required actuarial study before the expiration of three years following the date it last
26 filed an actuarial study with the Commissioner.

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

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

45 **"§ 58-64A-235. Notice of proposed name change.**

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

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

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

(a) A provider shall request the approval of the Commissioner before entering into a contract with a third party for the management of a continuing care retirement community. The request for approval required by this section shall include a copy of the proposed contract, the information required by G.S. 58-64A-160(a)(5) and G.S. 58-64A-160(a)(6) regarding the proposed third-party manager, a description of the third party's experience in managing continuing care retirement communities, and the reason for the change in management.

(b) The provider shall inform all residents in writing of the request for approval submitted to the Commissioner pursuant to this section within five business days after the request for approval is submitted to the Commissioner.

(c) The Commissioner shall comply with the review schedule in G.S. 58-64A-67 in response to a request for approval pursuant to this section.

(d) The Commissioner may disapprove of the request for approval if the Commissioner determines either of the following:

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

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

(e) The provider shall remove any third-party manager immediately upon discovery of either of the following:

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

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

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

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

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

"Part 9. Operating Reserve.

"§ 58-64A-255. 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

1 be required to maintain an operating reserve in an amount calculated using the table below, unless
 2 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%

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

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

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

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

33 **"§ 58-64A-260. Operating reserve calculation.**

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

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

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

49 (d) For providers that have voluntarily and permanently discontinued entering into
 50 continuing care contracts, or who operate a continuing care retirement community where not all
 51 occupants are under continuing care contracts, the Commissioner may allow a reduced operating

1 reserve if the Commissioner finds that the reduction is consistent with the financial protections
2 imposed by this Article. In making this determination, the Commissioner may consider factors
3 including the financial condition of the provider, the number of outstanding continuing care
4 contracts, the ratio of persons under continuing care contracts to those persons who do not hold
5 a continuing care contract, and the 12-month daily average independent living unit occupancy
6 rate.

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

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

16 **"§ 58-64A-270. Qualifying assets.**

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

18 (1) Cash.

19 (2) Cash equivalents.

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

22 a. Securities issued or directly and fully guaranteed or insured by the
23 government of the United States of America or any of its agencies or
24 instrumentalities.

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

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

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

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

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

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

1 **"§ 58-64A-275. Surety bond; letter of credit.**

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

5 (b) Surety Bond. – A surety bond shall be in a form acceptable to the Commissioner and
6 issued by an insurer authorized by the Commissioner to write surety business in this State. All of
7 the following shall apply to surety bonds issued pursuant to this Article:

8 (1) The surety bond may be exchanged or replaced with another surety bond if (i)
9 the surety bond applies to obligations and liabilities that arose during the
10 period of the original surety bond, (ii) the surety bond meets the requirements
11 of this section, and (iii) 90 days' advance written notice is provided to the
12 Commissioner.

13 (2) Notice of cancellation or nonrenewal of the surety bond required by this
14 section shall be provided to the provider and the Commissioner in writing at
15 least 45 days before cancellation or nonrenewal.

16 (3) A surety bond may be canceled by the issuer of the bond with respect to future
17 obligations or liabilities upon proper notice pursuant to this section and
18 without regard to approval or acceptance of the Commissioner.

19 (c) Letter of Credit. – A provider may file a clean, irrevocable, unconditional letter of
20 credit issued or confirmed by a qualified United States financial institution as defined in
21 G.S. 58-7-26(b) naming the Commissioner as beneficiary. The terms of the letter of credit shall
22 be approved by the Commissioner before issuance and before its renewal or modification. The
23 letter of credit shall provide all of the following information:

24 (1) Ninety days' prior written notice to both the provider and the Commissioner
25 of the financial institution's determination not to renew or extend the term of
26 the letter of credit.

27 (2) Unless otherwise arranged by the provider to the satisfaction of the
28 Commissioner, deposit by the financial institution of letter of credit funds in
29 an account designated by the Commissioner no later than 30 days before the
30 expiration of the letter of credit.

31 (3) Deposit by the financial institution of letter of credit funds in an account
32 designated by the Commissioner within five business days following written
33 instructions from the Commissioner that, in the sole judgment of the
34 Commissioner, funding of the operating reserve is required.

35 **"§ 58-64A-280. Operating reserve release.**

36 (a) An operating reserve shall only be released, in whole or in part, upon the submittal of
37 a detailed request from the provider and approval of that request by the Commissioner. This
38 request shall be submitted in writing for the Commissioner to review at least 10 business days
39 prior to the proposed date of release.

40 (b) In order to receive the approval of the Commissioner, a provider shall explain why a
41 release is necessary and, if applicable, submit a repayment schedule to replenish the operating
42 reserve to the amount required by G.S. 58-64A-255. Within five business days after the date a
43 request is deemed complete, the Commissioner shall provide the provider with a written notice
44 of approval or disapproval of the request. The Commissioner may disapprove any request to
45 release the funds if it is determined that the release is not in the best interest of residents.

46 (c) A provider shall give written notice to residents of any request made pursuant to
47 subsection (a) of this section at the same time the written request is submitted to the
48 Commissioner.

49 "Part 10. Offenses and Penalties.

50 **"§ 58-64A-285. Grounds for discretionary refusal, restriction, or revocation of a permit,**
51 **certificate, or license.**

1 (a) The Commissioner may (i) deny an application or any other request for approval or
2 (ii) restrict or revoke any permit, certificate, license, or other authorization issued under this
3 Article if the Commissioner finds that the applicant or provider did any of the following:

- 4 (1) Willfully violated any provision of this Article or of any rule or order of the
5 Commissioner.
- 6 (2) Made a material omission, misstatement, or misrepresentation, or committed
7 fraud in obtaining a permit, certificate, license, or other authorization.
- 8 (3) Engaged in any fraudulent or dishonest practices in the conduct of its business.
- 9 (4) Misappropriated, converted, or improperly withheld any monies.
- 10 (5) Failed to file an annual disclosure statement, annual report, or any other
11 materials requested by the Commissioner as required by this Article.
- 12 (6) Failed to deliver to prospective residents a disclosure statement as required by
13 this Article.
- 14 (7) Delivered to prospective residents a disclosure statement that makes a material
15 misstatement or omits a material fact and the provider, at the time of the
16 delivery of the disclosure statement, had actual knowledge of the misstatement
17 or omission.
- 18 (8) Failed to make a revised disclosure statement available to residents.
- 19 (9) Made any material misrepresentations to depositors, prospective residents, or
20 residents of a continuing care retirement community operated or to be
21 operated in this State.
- 22 (10) Failed to maintain the escrow account required under this Article, or released
23 a portion of an escrow account required to be maintained under this Article.
- 24 (11) Failed to deposit entrance fees and deposits into an escrow account as required
25 by this Article.
- 26 (12) Failed to maintain the operating reserve required under this Article, or
27 released a portion of the operating reserve required to be maintained under
28 this Article.
- 29 (13) Violated a restriction of its permit, certificate, or license.
- 30 (14) After request by the Commissioner for an investigation or examination,
31 refused access to records or information; refused to be investigated or
32 examined or to produce its accounts, records, and files for an investigation or
33 examination; refused to give information with respect to its affairs; or refused
34 to perform any other legal obligations related to an investigation or
35 examination.
- 36 (15) Failed to fulfill obligations under continuing care and continuing care at home
37 contracts.
- 38 (16) Violated the provisions of G.S. 58-64A-215 related to the purchase, sale, or
39 transfer of ownership of any real property used in the operations of a
40 continuing care retirement community operated in this State, including a
41 sale-leaseback transaction, or an interest in a continuing care retirement
42 community other than a sale of a living unit to a resident or other transferee.
- 43 (17) Violated the provisions of G.S. 58-64A-220 related to the change of control
44 of an applicant or provider holding a certificate or license under this Article.
- 45 (18) Violated the provisions of G.S. 58-64A-240 related to third-party
46 management.
- 47 (19) Failed to comply with the terms of a cease-and-desist order.
- 48 (20) Has been determined by the Commissioner to be in a hazardous condition.

49 (b) Findings of fact in support of a denial, restriction, or revocation shall be accompanied
50 by an explicit statement of the Commissioner's understanding of the underlying facts supporting
51 the findings.

1 (c) If the Commissioner has good cause to believe that a provider has committed a
2 violation for which revocation could be ordered, the Commissioner may first issue a
3 cease-and-desist order. If the cease-and-desist order is not or cannot be effective in remedying
4 the violation, the Commissioner may, after notice and hearing, order that a permit, certificate, or
5 license be revoked. That revocation order may be appealed to the Superior Court of Wake County
6 in the manner provided by G.S. 58-63-35. The provider shall accept no new deposits or entrance
7 fees while the revocation order is under appeal.

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

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

13 (f) The revocation by the Commissioner of a certificate or license shall not release the
14 provider from obligations assumed through continuing care and continuing care at home
15 contracts.

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

19 (h) A provider who has their permanent license revoked shall continue to file its annual
20 report and annual disclosure statement and pay annual fees to the Commissioner as required
21 under this Article as if the permanent license had continued in full force, but the provider shall
22 not issue any new continuing care or continuing care at home contracts.

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

27 **"§ 58-64A-290. Hazardous condition.**

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

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

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

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

35 (4) The age and collectability of receivables.

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

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

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

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

49 (9) Whether the management of a provider, including officers, directors, or any
50 other person who directly or indirectly controls the operations of an applicant,
51 provider, or continuing care retirement community, fails to possess and

1 demonstrate the competence, fitness, or reputation considered by the
2 Commissioner to be necessary to serve the provider or continuing care
3 retirement community in that position.

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

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

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

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

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

20 **"§ 58-64A-295. Corrective action plan.**

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

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

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

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

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

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

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

8 **"§ 58-64A-300. Investigations and subpoenas.**

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

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

16 (c) For the purpose of any investigation or proceeding under this Article, the
17 Commissioner or the Commissioner's designee has all the powers given to him for insurance
18 companies.

19 **"§ 58-64A-305. Civil liability.**

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

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

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

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

45 **"§ 58-64A-310. Criminal penalties.**

46 (a) Any person who willfully and knowingly violates any provision of this Article is
47 guilty of a Class 1 misdemeanor. The Commissioner may refer any available evidence concerning
48 a violation of this Article, or of any rule adopted or order issued pursuant to this Article, to the
49 Attorney General or a district attorney. The Attorney General or a district attorney may institute
50 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 at home contracts.

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

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

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

29 **"§ 58-64A-320. Remedies available in cases of unlawful contracting.**

30 (a) If the Commissioner determines that a provider is or has been violating the provisions
31 of this Article, the Commissioner may, after notice and opportunity for hearing, order the
32 provider to cease entering into binding reservation agreements, continuing care contracts, and
33 continuing care at home contracts and make a rescission offer to any resident or depositor who
34 entered into a binding reservation agreement, continuing care contract, or continuing care at
35 home contract while the provider was violating the provisions of this Article in accordance with
36 the provisions of this section.

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

41 (c) No resident or depositor shall have the benefit of this section who, within 30 days of
42 receipt, has refused or failed to accept an offer made in writing by the provider to rescind the
43 binding reservation agreement, continuing care contract, or continuing care at home contract in
44 question and to refund the full amount paid by the resident or depositor with interest at the rate
45 established monthly by the Commissioner of Banks pursuant to G.S. 24-1.1(c) on the full amount
46 paid for the binding reservation agreement, continuing care contract, or continuing care at home
47 contract for the period from the date of payment by the depositor or resident to the date of
48 repayment, less the cost of care, services, and housing provided, if applicable, and the amount of
49 any costs specifically incurred by the provider at the request of the resident or depositor and set
50 forth in writing, signed by both parties to the binding reservation agreement, continuing care
51 contract, or continuing care at home contract.

1 **"§ 58-64A-325. Administrative fines.**

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

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

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

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

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

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

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

35 **"§ 58-64A-330. Nonexclusive remedies.**

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

39 **"§ 58-64A-335. Soliciting or accepting new agreements or contracts by impaired or**
40 **insolvent providers.**

41 Regardless of whether delinquency proceedings as to a provider have been or are to be
42 initiated, a provider may not actively solicit, approve the solicitation of, or enter into new binding
43 reservation agreements, continuing care contracts, or continuing care at home contracts in this
44 State after the provider knew, or reasonably should have known, that the provider was impaired
45 or insolvent except with the written permission of the Commissioner. The Commissioner shall
46 approve or disapprove the continued marketing of new binding reservation agreements,
47 continuing care contracts, and continuing care at home contracts within 15 days after receiving a
48 request from a provider. If the provider has declared bankruptcy, the bankruptcy court or trustee
49 appointed by the court has jurisdiction over those matters.

50 "Part 11. Delinquency Proceedings.

51 **"§ 58-64A-340. Supervision, rehabilitation, and liquidation.**

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

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

11 (2) A provider has been or will be unable to fully perform its obligations pursuant
12 to continuing care and continuing care at home contracts, or to meet
13 prospective financial data previously filed by the provider.

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

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

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

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

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

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

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

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

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

44 **§ 58-64A-345. Receiverships; exception for long-term care facility beds.**

45 When the Commissioner has been appointed as a receiver under Article 30 of this Chapter
46 for a provider or a continuing care retirement community subject to this Article, the Department
47 of Health and Human Services may, notwithstanding any other provision of law, accept and
48 approve the addition of adult care home beds or nursing beds for a continuing care retirement
49 community owned by, or operated by, the provider, if it appears to the Court, upon petition of
50 the Commissioner or the provider, or on the Court's own motion, that (i) the best interests of the
51 provider or (ii) the welfare of persons who have previously contracted with the provider or may

1 contract with the provider, may be best served by the addition of adult care home beds or nursing
2 beds.

3 **"§ 58-64A-350. Contracts as preferred claims in liquidation.**

4 (a) In the event of liquidation of a provider, all continuing care and continuing care at
5 home contracts executed by the provider shall be deemed preferred claims against all assets
6 owned by the provider.

7 (b) Notwithstanding subsection (a) of this section, the claims of all continuing care and
8 continuing care at home contracts shall be subordinate to the liquidator's cost of administration
9 or any secured claim.

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

11 **"§ 58-64A-355. Right to organization.**

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

18 **"§ 58-64A-360. Semiannual meetings.**

19 (a) The board of directors or other governing body of a provider or its designated
20 representative shall hold in-person semiannual meetings with the residents of each continuing
21 care retirement community operated by the provider in this State for free discussions of subjects
22 affecting and concerning the continuing care retirement community and its residents. Nothing in
23 this subsection shall prevent a provider from making a semiannual meeting available via
24 electronic means to residents of the continuing care retirement community who are unable to
25 attend in person.

26 (b) A member of the governing body of the provider shall attend the semiannual meetings
27 in person. A provider may apply to the Commissioner for a waiver from the requirement of this
28 subsection based on unique circumstances.

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

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

- 39 (1) Telephone.
40 (2) Video conference.
41 (3) Video broadcast.

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

- 45 (1) A sound-only recording.
46 (2) A video recording with sound and picture.
47 (3) A digital or analog broadcast capable of being recorded.

48 (f) Recordings made pursuant to subsection (e) of this section shall remain available to
49 residents for at least 60 days after being made available to residents.

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

3 **SECTION 3.** This act becomes effective October 1, 2023, and applies to contracts
4 entered into, renewed, or amended on or after that date.