

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS15043-NE-15

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

Sponsors: Senator Johnson (Primary Sponsor).

Referred to:

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 Article 64 of Chapter 58 of the General Statutes is repealed.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 The following definitions apply to this Article:

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.



* D R S 1 5 0 4 3 - N E - 1 5 *

- 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 nonbinding 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) Annual debt service. – The current year's capitalized interest cost plus interest
13 expense and scheduled principal payments, excluding any balloon principal
14 payment amounts and any portion of the annual debt service that has been or
15 will be funded by debt for the payment of debt service.
- 16 (8) Applicant. – Any person with a pending application or other request for
17 approval under this Article.
- 18 (9) Audited financial statements. – Financial statements that have been prepared
19 in accordance with Generally Accepted Accounting Principles and examined
20 by an independent certified public accountant.
- 21 (10) Binding reservation agreement. – A binding contractual agreement between a
22 provider and a depositor that requires the payment of a deposit to reserve the
23 right to purchase continuing care, including the right to live in an independent
24 living unit at a continuing care retirement community. A purchase and sale
25 agreement for an independent living unit shall not be considered a binding
26 reservation agreement for the purposes of this Article.
- 27 (11) Cancel. – To terminate the force and effect of an agreement or contract.
- 28 (12) Continuing care. – The rendering to an individual other than an individual
29 related by blood, marriage, or adoption to the person rendering the care, of
30 housing in an independent living unit, together with related services, including
31 access, when needed, to progressive levels of health care, including either
32 assisted living care, as defined in G.S. 131D-2.1, or nursing care, as defined
33 in G.S. 131E-176, or both, regardless of whether the health care is provided at
34 the continuing care retirement community where the individual resides or
35 another location, or through a contractual relationship with a third party,
36 pursuant to a contract effective for the life of the individual or for a period
37 longer than one year.
- 38 (13) Continuing care at home. – A program offered by a provider holding a
39 permanent license under this Article that provides continuing care to an
40 individual who is not yet receiving housing, which may include programs that
41 offer an individual an opportunity to move to an independent living unit at a
42 future date, if desired, according to the provider's established priority and
43 admissions policies at the continuing care retirement community sponsoring
44 the continuing care at home program.
- 45 (14) 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 (15) Control. – The direct or indirect ability to direct or cause the direction of the
51 management and policies of a person, including the right to designate or elect

- 1 not less than a majority of the members of its board of directors or other
2 governing board or body.
- 3 (16) Controlling person. – The person that controls an applicant or provider.
- 4 (17) Debt service coverage ratio. – A capital structure ratio that measures a
5 provider's ability to pay annual debt service with cash flow from net cash
6 revenues and net entrance fee receipts. The quotient shall be calculated by
7 dividing the sum of total excess of revenues over or under expenses plus
8 interest expense, depreciation expense, amortization expense, other noncash
9 operating losses or expenses, and net cash proceeds from entrance fees, minus
10 entrance fee amortization, entrance fee refunds contractually past due, and
11 other noncash operating gains or revenues divided by annual debt service.
12 Entrance fees received from the initial residents of independent living units at
13 a continuing care retirement community that have been financed in whole or
14 in part with the proceeds of indebtedness shall be excluded from the net
15 proceeds from entrance fees up to an amount equal to the aggregate of the
16 principal amount of the indebtedness.
- 17 (18) Deposit. – Any transfer of consideration made by a depositor to a provider to
18 reserve an independent living unit at a continuing care retirement community.
- 19 (19) Entrance fee. – The sum of any initial, amortized, or deferred transfer of
20 consideration made or to be made by, or on behalf of, an individual entering
21 into a continuing care or continuing care at home contract.
- 22 (20) Escrow agent. – Any person approved by the Commissioner to hold entrance
23 fees and deposits required to be placed in escrow under this Article.
- 24 (21) Escrow agreement. – An agreement between a provider and an escrow agent
25 by which entrance fees and deposits required to be held in escrow in
26 accordance with this Article are held by the escrow agent until release is
27 permitted in accordance with this Article.
- 28 (22) Hazardous condition. – A present, or reasonably anticipated future condition,
29 whereby (i) a provider is unlikely to be able to meet its continuing care
30 obligations or to pay other obligations in the normal course of business or (ii)
31 the continued operation of a provider or continuing care retirement
32 community in its current condition is potentially harmful to depositors,
33 residents, creditors, or the general public.
- 34 (23) Housing. – A living unit set forth in a continuing care contract.
- 35 (24) Independent certified public accountant. – A certified public accountant or
36 accounting firm in good standing with the American Institute of Certified
37 Public Accountants and in all states in which he or she is licensed to practice
38 who is not employed by, or otherwise affiliated with, an applicant or provider.
- 39 (25) Independent living unit. – A living unit in a continuing care retirement
40 community for residents who are routinely able to carry out activities of daily
41 living, as defined in G.S. 160D-915, with minimal or no assistance. The
42 accommodations may be in the form of apartments, flats, houses, cottages,
43 condominium units, or rooms. Receiving home care or similar services,
44 regardless of whether the services are provided by the provider or another
45 person, does not preclude a living unit from being considered an independent
46 living unit.
- 47 (26) Insolvent. – A condition whereby the provider is unable to pay its obligations
48 as they come due in the normal course of business.
- 49 (27) Living unit. – An independent living unit, adult care home bed, nursing bed,
50 or other area within a continuing care retirement community set aside for the
51 exclusive use or control of one or more identified residents.

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

1 (41) Resident. – An individual who enters into a continuing care or continuing care
2 at home contract with a provider, or who is designated to be the individual to
3 receive care under the contract.

4 (42) Satisfactory actuarial balance. – Meeting all of the required conditions, as of
5 a specified valuation date, as set forth in accordance with accepted actuarial
6 standard of practice.

7 **"§ 58-64A-10. Rulemaking authority.**

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

9 **"§ 58-64A-15. Dividends and distributions.**

10 No dividend or other distribution of equity or net assets shall be paid by any provider after
11 the Commissioner has determined that the provider is in a hazardous condition or has been
12 determined to not be in satisfactory actuarial balance in an actuarial study filed with the
13 Commissioner pursuant to G.S. 58-64A-210, or when the payment would have the effect of
14 creating a hazardous condition in the provider or cause the provider to not be in satisfactory
15 actuarial balance.

16 **"§ 58-64A-20. Commissioner approval required to offer or provide continuing care.**

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

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

22 (2) Entering into any nonbinding reservation agreement, binding reservation
23 agreement, continuing care contract, or continuing care at home contract.

24 (3) Commencing construction of a prospective continuing care retirement
25 community.

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

28 (5) Executing new nonbinding reservation agreements, binding reservation
29 agreements, continuing care contracts, or continuing care at home contracts
30 after a permit, certificate, or license issued pursuant to this Article has been
31 inactivated, surrendered, or forfeited.

32 (6) Assuming responsibility for continuing care and continuing care at home
33 contracts.

34 (7) Advertising or marketing to the general public any product similar to
35 continuing care through the use of such terms as "life care," "life plan,"
36 "continuing care," or "guaranteed care for life," or similar terms, words, or
37 phrases.

38 **"§ 58-64A-25. Leasing real property for a continuing care retirement community.**

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

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

46 (1) The terms of the proposed lease, including the proposed length of the lease
47 and any proposed purchase options.

48 (2) The owner of the real property and the owner's relationship to the applicant or
49 provider.

50 (3) The distance from any existing real property owned by the applicant or
51 provider.

1 **"§ 58-64A-30. Required electronic filings and submissions.**

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

6 **"§ 58-64A-35. Waiver or modification.**

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

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

18 **"§ 58-64A-40. Confidential treatment.**

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

- 23 (1) Any third-party management contract or proposed management contract
24 provided to the Commissioner pursuant to G.S. 58-64A-55(a)(3) or
25 G.S. 58-64A-240(a).
26 (2) Any lease agreement or proposed lease agreement provided to the
27 Commissioner pursuant to G.S. 58-64A-25 or G.S. 58-64A-55(a)(4).
28 (3) Any request for approval provided to the Commissioner pursuant to
29 G.S. 58-64A-230(d) or G.S. 58-64A-235(a).
30 (4) The actuarial study, other than the statement of actuarial opinion, provided to
31 the Commissioner pursuant to G.S. 58-64A-60(a)(3), 58-64A-90(b)(3),
32 58-64A-185(a)(4), or 58-64A-210.
33 (5) Any market study provided to the Commissioner pursuant to
34 G.S. 58-64A-55(a)(9) or G.S. 58-64A-185(a)(5).
35 (6) Any feasibility study provided to the Commissioner pursuant to
36 G.S. 58-64A-60(a)(2) or G.S. 58-64A-90(b)(2).
37 (7) Documents, materials, or other information in the possession or control of the
38 Commissioner that are obtained by or disclosed to the Commissioner or any
39 other person in the course of an investigation or examination made pursuant
40 to G.S. 58-64A-295 or G.S. 58-64A-380.
41 (8) All working papers, information, documents, and copies of those materials
42 produced by, obtained by, or disclosed to the Commissioner in connection
43 with the financial analysis of a provider by the Commissioner.

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

1 event the Commissioner may publish all or any part of the information in a manner deemed
2 appropriate by the Commissioner.

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

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

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

15 (1) Share documents, materials, or other information, including the confidential
16 and privileged documents, materials, or information subject to subsection (a)
17 or (d) of this section, with other state, federal, and international regulatory
18 agencies, and with state, federal, and international law enforcement
19 authorities, provided that the recipient agrees in writing to maintain the
20 confidentiality and privileged status of the document, material, or other
21 information and has verified in writing the legal authority to maintain
22 confidentiality.

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

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

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

36 **"§ 58-64A-45. Advertisement in conflict with disclosures and contracts.**

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

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

42 **"§ 58-64A-50. Permit to accept deposits.**

43 (a) No person shall market a proposed continuing care retirement community without a
44 permit from the Commissioner. A person may apply for a permit by paying an application fee of
45 two hundred dollars (\$200.00) and filing an application on a form prescribed by the
46 Commissioner. The application form shall include all of the following:

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

48 (2) The name and business address of the applicant's controlling person, if control
49 of the applicant does not reside with the applicant.

50 (3) A proposed nonbinding reservation agreement.

- 1 (4) A proposed escrow agreement that meets the requirements of
2 G.S. 58-64A-105.
- 3 (5) A description of the proposed continuing care retirement community which
4 shall include all of the following:
- 5 a. The location of the proposed continuing care retirement community.
6 b. The types of living units to be offered.
7 c. The types of continuing care contracts to be offered.
8 d. A description of the services that will be provided to residents,
9 including an indication if any services will be provided by any related
10 parties or third parties.
- 11 e. A description of the applicant's corporate structure and experience in
12 developing or operating continuing care retirement communities,
13 including the experience of any related party of the applicant.
- 14 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in
15 response to an application for a permit to accept deposits.
- 16 (c) The Commissioner shall approve an application for a permit to accept deposits if all
17 of the following requirements are met:
- 18 (1) The application complies with this section.
19 (2) None of the grounds for denial listed in G.S. 58-64A-280 apply to the
20 applicant.
- 21 (3) The proposed escrow agreement meets the requirements of G.S. 58-64A-105.
22 (4) The proposed escrow agent and depository are acceptable in accordance with
23 G.S. 58-64A-100.
- 24 (d) After the issuance of a permit to accept deposits, the applicant may do all of the
25 following:
- 26 (1) Disseminate materials describing the intent to develop a continuing care
27 retirement community.
- 28 (2) Enter into nonbinding reservation agreements.
29 (3) Collect deposits in an amount not to exceed five thousand dollars (\$5,000).
30 All deposits collected shall be placed in escrow and shall only be released in
31 accordance with Part 4 of this Article.
- 32 (e) After the issuance of a permit to accept deposits, the Commissioner shall require the
33 provider to file periodic status reports in a form prescribed by the Commissioner.
- 34 "**§ 58-64A-55. Start-up certificate.**"
- 35 (a) A person may apply for a start-up certificate by paying an application fee of two
36 thousand dollars (\$2,000) and submitting all of the following to the Commissioner for review:
- 37 (1) A statement signed by the applicant, under penalty of perjury, certifying that
38 to the best of the applicant's knowledge and belief, the items submitted in the
39 application are correct. If the applicant is a corporation, the chief executive
40 officer or other authorized individual shall sign the statement. If there are
41 multiple applicants, these requirements shall apply to each applicant.
- 42 (2) A statement disclosing any revocation or other disciplinary action taken, or in
43 the process of being taken, against a license, permit, or certificate held or
44 previously held by the applicant, any current or former related party, or any
45 person included or to be included in a current or proposed obligated group.
- 46 (3) If the applicant intends to employ a third-party management company to
47 manage the continuing care retirement community, a copy of the management
48 contract or proposed management contract, if available, along with a narrative
49 describing the proposed third-party management company's experience
50 managing continuing care retirement communities.

- 1 (4) If the applicant intends to lease any land or other real property to be used as
2 part or all of the proposed continuing care retirement community, the name of
3 the person from whom the land or other real property will be leased along with
4 a copy of the lease agreement, or proposed lease agreement, if available, or a
5 statement describing the applicant's intentions, including the intended length
6 of the lease, if a lease agreement or proposed lease agreement is not available.
7 If the applicant intends to lease any of the real property of the continuing care
8 retirement community and to collect entrance fees, Commissioner approval
9 must be received pursuant to G.S. 58-64A-25.
- 10 (5) If the applicant is not the owner of the proposed site, a statement identifying
11 the current owner and any plans the applicant has for acquiring the proposed
12 site, including details of any purchase option and requirements for a purchase
13 option deposit. If a purchase option requires a purchase option deposit, the
14 purchase option deposit shall be placed in escrow or secured in a manner
15 acceptable to the Commissioner.
- 16 (6) A list of all continuing care retirement communities currently or previously
17 owned, operated, managed, or developed by the applicant or any related party
18 of the applicant. The list shall do all of the following:
- 19 a. Furnish the name, address, city, and state of each continuing care
20 retirement community listed, and explain the existing or past
21 relationship to the applicant.
- 22 b. Specify the current status of each continuing care retirement
23 community listed and include any administrative actions or financial
24 problems that currently exist, or have existed, within three years after
25 any relationship was terminated.
- 26 (7) A disclosure statement that meets the requirements of G.S. 58-64A-150.
- 27 (8) If the applicant intends to enter into binding reservation agreements, a copy
28 of the binding reservation agreement that the applicant intends to use.
- 29 (9) A market study prepared by a person experienced in the preparation of
30 continuing care retirement community market studies.
- 31 (10) Any other data, financial statements, and pertinent information as the
32 Commissioner may reasonably require with respect to the applicant, the
33 applicant's controlling person, or the proposed continuing care retirement
34 community to assist in determining the market and financial viability of the
35 proposed continuing care retirement community and the competency,
36 experience, and integrity of the applicant's and, if applicable, the applicant's
37 controlling person's, governing body, officers, and management.
- 38 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in
39 response to an application for a start-up certificate.
- 40 (c) The Commissioner shall approve an application for a start-up certificate if all of the
41 following requirements are met:
- 42 (1) The application complies with this section.
- 43 (2) None of the grounds for denial listed in G.S. 58-64A-280 apply to the
44 applicant.
- 45 (3) The disclosure statement meets the requirements of G.S. 58-64A-150.
- 46 (4) A market for the proposed continuing care retirement community appears to
47 exist and the continuing care retirement community appears to be financially
48 viable, as evidenced by the market study and the five-year prospective
49 financial statements included in the applicant's disclosure statement.

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

17 **"§ 58-64A-60. Preliminary certificate.**

- 18 (a) A person may apply for a preliminary certificate by submitting all of the following to
19 the Commissioner for review:
- 20 (1) A statement signed by the applicant, under penalty of perjury, certifying that
21 to the best of the applicant's knowledge and belief, the items submitted in the
22 application are correct. If the applicant is a corporation, the chief executive
23 officer or other authorized individual shall sign the statement. If there are
24 multiple applicants, these requirements shall apply to each applicant.
- 25 (2) A feasibility study, prepared by an independent person experienced in
26 preparing feasibility studies for continuing care retirement communities, with
27 financial, marketing, and actuarial assumptions that projects the market and
28 financial viability of the proposed continuing care retirement community. The
29 study shall include all of the following:
- 30 a. A description of the proposed continuing care retirement community,
31 its service package, the number and type of living units, fee structure,
32 and anticipated opening date, including a detailed schedule of
33 projected periodic fees and a description of how the projected periodic
34 fees were computed.
- 35 b. A description of any proposed construction plans, construction
36 financing, and permanent financing for the proposed continuing care
37 retirement community.
- 38 c. A description of the anticipated source, cost, terms, and uses of all
39 funds to be used in the real property acquisition, construction,
40 marketing, and operation for the proposed continuing care retirement
41 community, including all 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 equity to be
45 contributed by the applicant or any other person.
- 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 continuing care retirement community.
- 49 4. A statement itemizing all estimated project costs, including the
50 real property costs, the cost of acquiring or designing and
51 constructing the proposed continuing care retirement

- 1 community, and all similar costs that the applicant expects to
2 incur prior to the commencement of operation. This
3 itemization shall identify all costs related to the proposed
4 continuing care retirement community, including financing
5 expenses, resident acquisition costs, marketing costs, and
6 furniture and equipment.
- 7 5. An estimate of any reserves required by financing and the
8 operating reserve required pursuant to Part 11 of this Article.
- 9 6. An estimate of the amount of funds, if any, that will be
10 necessary to fund start-up losses and to otherwise provide
11 additional financial resources in an amount sufficient to ensure
12 full performance by the applicant of its continuing care
13 contract obligations.
- 14 d. An analysis of the potential market for the applicant's proposed
15 continuing care retirement community, addressing all of the following:
- 16 1. The population, household growth, age distribution, household
17 income, household tenure, and resale housing values within the
18 primary market area.
- 19 2. A demand analysis of the range of likely target consumers
20 within the primary market area as well as estimated penetration
21 rates.
- 22 3. An economic analysis of current market conditions and trends
23 that can impact the feasibility of the proposed continuing care
24 retirement community, positively or negatively, including real
25 estate, income, employment, and the general economic outlook
26 for the primary market area and surrounding areas.
- 27 4. An analysis of the project location and immediate area in
28 relationship to key variables, including accessibility,
29 employment, and proximity to health care, retail, and other
30 services.
- 31 5. The types of services and amenities desired and the forms of
32 ownership or interest in real property preferred.
- 33 6. Existing and planned competition in the primary market area.
- 34 e. A description of the sales and marketing plan, including all of the
35 following:
- 36 1. Marketing projections, anticipated sales, and cancellation
37 rates.
- 38 2. Month-by-month projections of independent living unit sales
39 through stabilized occupancy.
- 40 3. A description of the marketing methods, staffing, and
41 advertising media to be used by the applicant.
- 42 4. An estimate of the total entrance fees to be received prior to
43 opening the proposed continuing care retirement community.
- 44 f. Projected move-in rates and resident profiles, including couple mix by
45 living unit type, age distribution, adult care home bed and nursing bed
46 utilization, and living unit turnover or resale rates.
- 47 g. A description or analysis of costs and revenues throughout the
48 development and resident fill-up period of the proposed continuing
49 care retirement community.
- 50 h. Prospective financial statements for the period commencing on the
51 first day of the applicant's current fiscal year through at least the fifth

- 1 year of operation which shall be prepared in accordance with standards
2 adopted by the American Institute of Certified Public Accountants.
- 3 i. Any other factors that, in the opinion of the preparer, will affect the
4 feasibility of the proposed continuing care retirement community.
- 5 j. The name of the person who prepared the feasibility study and the
6 experience of the person in preparing similar studies or otherwise
7 consulting in the field of continuing care.
- 8 k. An evaluation and opinion by the person who prepared the feasibility
9 study of the underlying assumptions used as a basis for the study,
10 including a statement on whether the assumptions are reasonable and
11 proper.
- 12 (3) An actuarial study prepared in accordance with accepted actuarial standards
13 of practice which estimates the earliest year that the proposed continuing care
14 retirement community is projected to be in satisfactory actuarial balance.
15 Applicants who do not or will not collect entrance fees or some other
16 prepayment of costs are exempt from this requirement and shall only be
17 required to submit an actuarial projection of future population flows and adult
18 care home bed and nursing bed needs. An actuarial projection of future
19 population flows and adult care home bed and nursing bed needs shall use (i)
20 appropriate mortality, morbidity, withdrawal, occupancy, and other
21 demographic assumptions and (ii) a projection period that extends to a point
22 at which, in the actuary's professional judgment, the use of a longer period
23 would not materially affect the results and conclusions.
- 24 (4) An updated disclosure statement that meets the requirements of
25 G.S. 58-64A-150.
- 26 (5) At least one of the following:
- 27 a. Confirmation of signed binding reservation agreements or continuing
28 care contracts for at least fifty percent (50%) of the new independent
29 living units, reserved by a deposit equal to at least ten percent (10%)
30 of the entrance fee.
- 31 b. Confirmation of signed binding reservation agreements or continuing
32 care contracts for at least fifty percent (50%) of the new independent
33 living units, reserved by a nonrefundable deposit equal to the periodic
34 fee for at least two months for proposed continuing care retirement
35 communities that have no entrance fee.
- 36 c. Confirmation of one hundred thousand dollars (\$100,000) placed on
37 deposit with the Commissioner, if the applicant (i) does not collect
38 presale entrance fees or deposits in an amount equal to at least ten
39 percent (10%) of the entrance fee or (ii) does not collect presale
40 entrance fees or deposits and does not collect nonrefundable deposits
41 equal to the periodic fee of at least two months. This deposit is subject
42 to the following requirements:
- 43 1. The deposit shall only be returned to the applicant upon
44 issuance of a permanent license.
- 45 2. The deposit shall be made in accordance with G.S. 58-5-20.
- 46 3. The deposit shall automatically be forfeited if the applicant
47 does not obtain a permanent license within five years after the
48 issuance of a preliminary certificate. Forfeited deposits shall
49 be remitted to the Civil Penalty and Forfeiture Fund in
50 accordance with G.S. 115C-457.2.

- 1 (6) If applicable, confirmation that commitments have been secured for
2 construction financing and long-term financing or that a documented plan
3 acceptable to the Commissioner has been adopted by the applicant for
4 long-term financing.
- 5 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in
6 response to an application for a preliminary certificate.
- 7 (c) The Commissioner shall approve an application for a preliminary certificate if all of
8 the following requirements are met:
- 9 (1) The application complies with this section.
- 10 (2) None of the grounds for denial listed in G.S. 58-64A-280 apply to the
11 applicant.
- 12 (3) The feasibility study meets all of the following requirements:
- 13 a. Includes in the prospective financial statements all obligations and
14 liabilities to be undertaken by the applicant pursuant to the terms of
15 the proposed continuing care contracts.
- 16 b. Demonstrates that the anticipated sources of funds to finance and
17 operate the proposed continuing care retirement community are equal
18 to or greater than the anticipated uses of funds to (i) construct or
19 acquire the proposed continuing care retirement community and (ii)
20 fund start-up losses and provide sufficient resources to ensure full
21 performance of the applicant's continuing care contract obligations.
- 22 c. Demonstrates that the continuing care retirement community is
23 financially feasible.
- 24 (4) A market for the continuing care retirement community appears to exist, based
25 on data that meets all of the following requirements:
- 26 a. Is specific to the proposed continuing care retirement community.
- 27 b. Considers existing and proposed competition in the primary market
28 area.
- 29 c. Demonstrates the existence of a market for the age, marital status,
30 number, population trends, net worth, home values, and income of the
31 potential residents.
- 32 d. Demonstrates that the rate of penetration in the proposed market area
33 is within acceptable industry ranges.
- 34 (5) The actuarial study, if applicable, projects that the proposed continuing care
35 retirement community will be in satisfactory actuarial balance within a
36 reasonable period of time after achieving stabilized occupancy, as determined
37 by the Commissioner, or if no actuarial study is required, the actuarial
38 projection of future population flows demonstrates a sufficient number of
39 adult care home beds and nursing beds to meet the future needs of residents
40 and the future contractual obligations of the applicant, as determined by the
41 Commissioner.
- 42 (6) The applicant has met one of the requirements in subdivision (5) of subsection
43 (a) of this section.
- 44 (7) If applicable, the applicant has secured commitments for construction
45 financing and long-term financing or that a documented plan acceptable to the
46 Commissioner has been adopted by the applicant for long-term financing.
- 47 (8) The applicant demonstrates an ability to comply with this Article and to
48 provide continuing care as proposed and meet all financial obligations related
49 to its operations.
- 50 (d) After issuing a preliminary certificate, the Commissioner shall do both of the
51 following:

- 1 (1) Require the provider to submit periodic sales, development, and unaudited
2 financial statements in a form prescribed by the Commissioner.
3 (2) Post the disclosure statement of the continuing care retirement community on
4 the Department's website.

5 (e) After receiving a preliminary certificate from the Commissioner, the provider may do
6 both of the following:

- 7 (1) Construct a continuing care retirement community.
8 (2) Convert an existing structure or structures into a continuing care retirement
9 community.

10 **"§ 58-64A-65. Permanent license.**

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

- 13 (1) A statement signed by the applicant, under penalty of perjury, certifying that
14 to the best of the applicant's knowledge and belief, the items submitted in the
15 application are correct. If the applicant is a corporation, the chief executive
16 officer or other authorized individual shall sign the statement. If there are
17 multiple applicants, these requirements shall apply to each applicant.
18 (2) An updated disclosure statement that meets the requirements of
19 G.S. 58-64A-150.
20 (3) Confirmation that the applicant has established a plan to have health care
21 available to residents promised in continuing care contracts upon opening,
22 either by the applicant directly, or through contractual agreements.
23 (4) At least one of the following:
24 a. Confirmation of signed binding reservation agreements or continuing
25 care contracts for at least seventy percent (70%) of the new
26 independent living units, reserved by a deposit equal to at least ten
27 percent (10%) of the entrance fee.
28 b. Confirmation of signed binding reservation agreements or continuing
29 care contracts for at least seventy percent (70%) of the new
30 independent living units, reserved by a nonrefundable deposit equal to
31 the periodic fee for at least two months for proposed continuing care
32 retirement communities that have no entrance fee.
33 c. Confirmation of the one hundred thousand dollar (\$100,000) deposit
34 required pursuant to G.S. 58-64A-60(a)(5)c.
35 (5) Confirmation that the applicant has long-term financing in place, and if the
36 applicant is leasing the land or other real property of the continuing care
37 retirement community, confirmation that the lease is in place and, if
38 applicable, that the lease has been approved by the Commissioner pursuant to
39 G.S. 58-64A-25.
40 (6) Confirmation that the applicant is in compliance with all other state, federal,
41 municipal, and county laws and regulations. If the applicant is not in
42 compliance, the applicant shall include a statement that describes the nature
43 of the deficiency.
44 (7) A statement concerning any litigation, orders, judgments, or decrees which
45 may involve or impact the applicant or proposed continuing care retirement
46 community.
47 (8) Evidence that the applicant has in place the operating reserve required by Part
48 11 of this Article.

49 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in
50 response to an application for a permanent license.

1 (c) The Commissioner shall approve an application for a permanent license if all of the
2 following requirements are met:

3 (1) The application complies with this section.

4 (2) None of the grounds for denial listed in G.S. 58-64A-280 apply to the
5 applicant.

6 (d) After receiving a permanent license from the Commissioner, the provider may do
7 both of the following:

8 (1) Open the continuing care retirement community.

9 (2) Provide continuing care.

10 (e) If the Commissioner determines that the requirements of subsection (c) of this section
11 are not met, the Commissioner may do either of the following:

12 (1) Deny the application.

13 (2) Issue a restricted permanent license with an explanation of (i) the restrictions
14 established by the Commissioner under subsection (f) of this section and (ii)
15 the conditions the provider must satisfy to qualify for a permanent license.

16 (f) After receiving a restricted permanent license from the Commissioner, the provider
17 may operate a continuing care retirement community under restrictions established by the
18 Commissioner until the Commissioner issues a permanent license. When the Commissioner
19 issues a restricted permanent license, the provider shall inform all depositors and residents within
20 10 business days of (i) all restrictions imposed by the restricted permanent license and (ii) all
21 conditions that the provider must satisfy to qualify for a permanent license.

22 (g) After issuing a permanent license or restricted permanent license, the Commissioner
23 shall do both of the following:

24 (1) Require the provider to submit periodic occupancy reports and financial
25 statements 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 (h) A permanent license or restricted permanent license shall be valid for as long as the
29 Commissioner determines that the provider continues to meet the requirements of this Article.

30 **"§ 58-64A-70. Review schedule.**

31 The Commissioner shall comply with the following schedule in response to an application
32 for (i) a permit to accept deposits, (ii) a start-up certificate, (iii) a preliminary certificate, (iv) a
33 permanent license, (v) an expansion, (vi) a continuing care at home license, (vii) an expansion
34 notification, and (viii) a request for approval pursuant to G.S. 58-64A-230, 58-64A-235, and
35 58-64A-240:

36 (1) Within five business days after receipt of an application, a notification, a
37 request for approval, or of materials intended to supplement an incomplete
38 application, notification, or request for approval, the Commissioner shall
39 acknowledge receipt in writing.

40 (2) Within 10 business days after receipt of an application for a permit to accept
41 deposits, permanent license, and an expansion notification, or of materials
42 intended to supplement an incomplete application or expansion notification,
43 and within 30 days after receipt of an application for a start-up certificate, a
44 preliminary certificate, a continuing care at home license, and an expansion,
45 or a request for approval, or of materials intended to supplement an incomplete
46 application or request for approval, the Commissioner shall determine if the
47 application, notification, or request for approval is complete and inform the
48 applicant in writing of the determination. If the Commissioner determines that
49 the application, notification, or request for approval is incomplete, the notice
50 to the applicant shall specifically set forth and request any additional

1 information the Commissioner determines is necessary to complete the
2 application, notification, or request for approval.

3 (3) When the Commissioner determines an application, notification, or request
4 for approval is complete, the Commissioner shall approve or deny the
5 application, notification, or request for approval as follows:

6 a. Within five business days for a permit to accept deposits and an
7 expansion notification.

8 b. Within 30 days for a start-up certificate, permanent license, continuing
9 care at home license, expansion, and a request for approval.

10 c. Within 45 days for a preliminary certificate.

11 **"§ 58-64A-75. Expiration of a permit to accept deposits and start-up certificate.**

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

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

17 (1) The reasons why the provider has not applied for a start-up certificate or
18 preliminary certificate, as applicable.

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

21 (c) In response to a request for an extension, the Commissioner shall do one of the
22 following:

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

30 (2) If the Commissioner determines that there is no satisfactory cause for the
31 delay, the Commissioner shall instruct the escrow agent to refund to
32 depositors all deposits held in escrow, plus any interest that may be due under
33 the terms of any nonbinding reservation agreement, binding reservation
34 agreement, or continuing care contract.

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

38 **"§ 58-64A-80. Denial of an application, notification, or other request for approval.**

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

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

"Part 3. Expansion.

"§ 58-64A-85. Expansion notification.

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

(1) Notify and obtain written approval from the Commissioner.

(2) Notify all residents in writing of the provider's intent to expand the number of independent living units at the continuing care retirement community. This notification shall include the description required by subdivision (b)(1) of this section.

(b) The expansion notification to the Commissioner required by this section shall include all of the following:

(1) A description of the proposed expansion project, including the number of independent living units to be added.

(2) If the provider intends to enter into nonbinding reservation agreements, binding reservation agreements, or both, a copy of the proposed agreements that the provider intends to use.

(3) A proposed escrow agreement that meets the requirements of G.S. 58-64A-105.

(4) An updated disclosure statement that meets the requirements of G.S. 58-64A-150.

(c) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in response to an expansion notification.

(d) The Commissioner shall approve the expansion notification if all of the following requirements are met:

(1) The expansion notification complies with this section.

(2) None of the grounds for denial listed in G.S. 58-64A-280 apply to the provider.

(3) The proposed escrow agreement meets the requirements of G.S. 58-64A-105.

(4) The proposed escrow agent and depository are acceptable in accordance with G.S. 58-64A-100.

(e) After the Commissioner approves the expansion notification, the provider shall submit periodic sales and development reports to the Commissioner in a form prescribed by the Commissioner.

(f) After the Commissioner approves the expansion notification, the provider may do all of the following:

(1) Disseminate materials, including advertisements, describing the intent to expand the number of independent living units at the continuing care retirement community.

(2) Enter into nonbinding reservation agreements, binding reservation agreements, and continuing care contracts for the proposed independent living units.

(3) Collect entrance fees and deposits for the proposed independent living units. All deposits collected shall be placed in escrow and shall only be released in accordance with Part 4 of this Article, unless otherwise exempted by the Commissioner.

"§ 58-64A-90. Expansion application.

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

- 1 (1) Receive Commissioner approval of an expansion notification pursuant to
2 G.S. 58-64A-85.
- 3 (2) Apply to the Commissioner for approval to commence construction.
- 4 (b) The application required by this section shall include all of the following:
- 5 (1) An application fee of one thousand dollars (\$1,000).
- 6 (2) A feasibility study, prepared by an independent person experienced in
7 preparing feasibility studies for continuing care retirement communities, with
8 financial, marketing, and actuarial assumptions that projects the market and
9 financial viability of the proposed expansion. The study shall include all of
10 the following items:
- 11 a. A description of the applicant's proposed expansion project, including
12 the number of independent living units being added, fee structure, a
13 description of how the projected fees were computed, and the
14 anticipated project time line.
- 15 b. A description of the construction plans, construction financing, and
16 permanent financing for the proposed expansion project, including all
17 of the following:
- 18 1. A description of all debt to be incurred by the applicant,
19 including the source, anticipated terms, and costs of financing.
- 20 2. A description of the source and amount of any equity to be
21 contributed by the applicant.
- 22 3. A description of the source and amount of all other funds,
23 including entrance fees, that will be necessary to complete and
24 operate the proposed expansion.
- 25 4. A statement itemizing all estimated project costs, including the
26 real property costs, the cost of designing and constructing the
27 proposed expansion, and all similar costs that the applicant
28 expects to incur prior to the opening of the expansion. This
29 itemization shall identify all costs related to the proposed
30 expansion, including financing expenses, resident acquisition
31 costs, marketing costs, and furniture, fixtures, and equipment.
- 32 5. An estimate of any reserves required by financing and the
33 operating reserve required pursuant to Part 11 of this Article.
- 34 c. An analysis of the potential market for the proposed expansion,
35 addressing all of the following:
- 36 1. The population, household growth, age distribution, household
37 income, household tenure, and resale housing values within the
38 primary market area.
- 39 2. A demand analysis of the range of likely target consumers
40 within the primary market area as well as estimated penetration
41 rates.
- 42 3. An economic analysis of current market conditions and trends
43 that can impact the feasibility of the proposed expansion,
44 positively or negatively, including real estate, income,
45 employment, and the general economic outlook for the primary
46 market area and surrounding areas.
- 47 4. Existing and planned competition in the primary market area.
- 48 d. A description of the sales and marketing plan, including all of the
49 following:
- 50 1. Marketing projections, anticipated sales, and cancellation
51 rates.

- 1 (1) A provision requiring that all funds received shall be placed into the escrow
2 account in accordance with G.S. 58-64A-115.
- 3 (2) A provision for investment of escrow account funds in a manner consistent
4 with G.S. 58-64A-120.
- 5 (3) A provision regarding the payment of interest earned on the funds held in the
6 escrow account in the manner specified in G.S. 58-64A-125.
- 7 (4) A provision for refunds to depositors in the manner specified by
8 G.S. 58-64A-135.
- 9 (5) A provision that any refund or release of escrow account funds be performed
10 in the manner specified in G.S. 58-64A-135 and G.S. 58-64A-140, including
11 a statement as to whom payment of interest earned on the funds will be made.
- 12 (6) A statement that the purpose of the escrow agreement is to protect residents
13 and prospective residents.
- 14 (7) The amount of the escrow agent fee.
- 15 (8) A provision that funds deposited shall not be subject to any liens or charges
16 by the escrow agent.
- 17 (9) A provision requiring the escrow agent to furnish the provider with a monthly
18 statement indicating the amount of any disbursements from or deposits to the
19 escrow account and the condition of the account during the monthly period
20 covered by the statement.
- 21 (10) A provision requiring the escrow agent to furnish to the Commissioner, upon
22 the request of the Commissioner, periodic reports, including the monthly
23 statement required pursuant to subdivision (9) of this section, certifying the
24 amount of funds held on deposit.
- 25 (11) A provision requiring the escrow agent to furnish to a depositor, upon the
26 request of a depositor, a statement indicating the depositor's portion of the
27 escrow account.
- 28 (12) Representations by the escrow agent that it is not and shall not be during the
29 term of the escrow agreement, a related party of the provider, a lender to the
30 provider, or a fiduciary for any lender or bondholder for the provider, unless
31 approved by the Commissioner.

32 **"§ 58-64A-110. Changes to escrow agreement.**

33 All changes to an escrow agreement shall be submitted to, and approved by, the
34 Commissioner before use by a provider.

35 **"§ 58-64A-115. Entrance fee and deposit delivery to the escrow agent.**

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

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

43 **"§ 58-64A-120. Investment of funds in escrow.**

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

- 46 (1) Investment in an interest-bearing account.
- 47 (2) Investment in instruments guaranteed by the federal government or an agency
48 of the federal government.
- 49 (3) Investment in investment funds secured by federally guaranteed instruments.

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

1 **"§ 58-64A-125. Earnings from funds in escrow.**

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

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

9 (c) When release of earnings is approved by the Commissioner, interest earned by the
10 funds in the escrow account shall be distributed to the provider or depositors in accordance with
11 the terms of the continuing care contract, binding reservation agreement, or nonbinding
12 reservation agreement.

13 **"§ 58-64A-130. Escrowed funds not to be used as collateral.**

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

20 **"§ 58-64A-135. Refunds of escrowed entrance fees and deposits.**

21 (a) An escrow agent shall refund to a depositor, or their legal representative, all amounts
22 required by the depositor's nonbinding reservation agreement, binding reservation agreement, or
23 continuing care contract upon receiving written notice from the provider of any of the following:

24 (1) The death of a depositor.

25 (2) Nonacceptance by the provider.

26 (3) Voluntary cancellation.

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

28 (5) Written notice from the Commissioner.

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

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

38 **"§ 58-64A-140. Release of escrowed entrance fees and deposits.**

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

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

47 (2) The provider has long-term financing in place for the proposed continuing
48 care retirement community or expansion, or if the provider is leasing the land
49 or other real property of the continuing care retirement community,
50 certification that the lease is in place and, if applicable, that the lease has been
51 approved by the Commissioner pursuant to G.S. 58-64A-25.

- 1 (2) Average daily cash operating expenses. – The total expenses of a provider
2 incurred in the conduct of the provider's business over a defined period of
3 time, divided by the number of days in that period. For purposes of this
4 definition, "total expenses" includes interest expense, but excludes
5 depreciation expense, amortization expense, realized or unrealized
6 nonoperating losses or expenses, bad debt expense, and other noncash
7 expenses.
- 8 (3) Capital expenditures as a percentage of depreciation ratio. – A capital
9 structure ratio that indicates the level of capital reinvestment by a provider.
10 The quotient shall be computed by dividing total purchases of property, plant,
11 and equipment by total depreciation expense.
- 12 (4) Cushion ratio. – A liquidity ratio that measures a provider's ability to pay its
13 annual debt service using its unrestricted cash and investments. The quotient
14 shall be computed by dividing unrestricted cash and investments by annual
15 debt service.
- 16 (5) Days cash on hand ratio. – A liquidity ratio that measures the number of days
17 of cash operating expenses a provider could cover using its existing
18 unrestricted cash and investments. The quotient shall be computed by dividing
19 unrestricted cash and investments by average daily cash operating expenses.
- 20 (6) Multi-entity organization. – A collection of distinct legal entities that are
21 under common control.
- 22 (7) Net operating margin ratio. – A profitability ratio that measures the margin
23 generated from the core operations of a provider. The quotient shall be
24 calculated by dividing resident operating income by resident revenue.
- 25 (8) Operating ratio. – A profitability ratio that measures whether current year cash
26 operating revenues are sufficient to cover current year cash operating
27 expenses without the inclusion of cash from entrance fee receipts. The
28 quotient shall be computed by dividing total operating expenses, excluding
29 depreciation expense and amortization expense, by total operating revenues,
30 excluding amortization of entrance fees and other deferred revenue.
- 31 (9) Resale fee. – A contractual assessment by the provider against the proceeds
32 from the sale of an independent living unit.
- 33 (10) Resident expense. – Total operating expenses excluding interest expense,
34 depreciation expense, amortization expense, and income taxes.
- 35 (11) Resident revenue. – Total operating revenue excluding interest and dividend
36 income, entrance fee amortization, and contributions.
- 37 (12) Unrestricted cash and investments. – The sum of the provider's unrestricted
38 cash, cash equivalents and investments, and any provider restricted funds that
39 are available to pay debt or to pay operating expenses. For purposes of this
40 definition, the assets serving as the operating reserve required by
41 G.S. 58-64A-245 shall be considered unrestricted.
- 42 (13) Unrestricted cash and investments to long-term debt ratio. – A capital
43 structure ratio that (i) measures a provider's position in available cash and
44 marketable securities in relation to its long-term debt and (ii) measures a
45 provider's ability to withstand annual fluctuations in cash. The quotient shall
46 be calculated by dividing unrestricted cash and investments by total long-term
47 debt, less the current portion of long-term debt.

48 **"§ 58-64A-150. Disclosure statement.**

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

- 1 (1) The name, business address, and telephone number of the provider and a
2 statement of whether the provider is a partnership, corporation, or other type
3 of legal entity.
- 4 (2) A statement disclosing whether the provider is for-profit or nonprofit, and if
5 nonprofit, the provision of the federal Internal Revenue Code under which the
6 provider is exempt from the payment of income tax, and a statement disclosing
7 whether the provider is current on all tax filings.
- 8 (3) A statement disclosing whether the provider is privately owned or publicly
9 owned.
- 10 (4) A statement disclosing whether the provider is part of a multi-entity
11 organization, and if so, both of the following:
- 12 a. A statement indicating whether the audited financial statements
13 required by subdivision (36) of this subsection are prepared on a
14 consolidated basis with all entities included and, if not, a statement
15 indicating how the audited financial statements are prepared.
- 16 b. A company structure chart showing the provider's relationship with the
17 other entities in the multi-entity organization.
- 18 (5) A statement identifying the controlling person of the provider, if control does
19 not exist with the provider, including the controlling person's business
20 address.
- 21 (6) The name, business address, education, work experience, and length of service
22 with the provider or the provider's controlling person of (i) all officers,
23 directors, trustees, managers, managing or general partners of the provider
24 and, if applicable, the provider's controlling person, and any person having a
25 ten percent (10%) or greater equity or beneficial interest in the provider or the
26 provider's controlling person and (ii) any person who will be managing the
27 continuing care retirement community on a day-to-day basis, and a description
28 of the person's interest in or occupation with the provider or controlling
29 person. If any person required to be named pursuant to this subdivision does
30 not have a business address or uses this person's home address as the person's
31 business address, the provider shall list the address of the provider as the
32 person's business address. A provider shall not disclose the personal address
33 of any person required to be named pursuant to this subdivision, unless
34 required to do so by another provision of law or a court order.
- 35 (7) The following information on all persons named in response to subdivisions
36 (1), (5), and (6) of this subsection:
- 37 a. A description of the person's business experience, if any, in the
38 operation or management of a continuing care retirement community.
- 39 b. The name and address of any professional service firm, association,
40 trust, partnership, or corporation in which this person has, or which
41 has in this person, a ten percent (10%) or greater interest and which it
42 is presently intended shall currently or in the future provide goods,
43 leases, or services to the provider of an aggregate value of five
44 thousand dollars (\$5,000) or more within any fiscal year, including a
45 description of the goods, leases, or services and the actual or probable
46 cost to the provider, or a statement that this cost cannot presently be
47 estimated and the reason why it cannot be presently estimated.
- 48 c. A description of any matter in which the person (i) has been convicted
49 of any felony or pleaded nolo contendere to a felony charge, (ii) has
50 been held liable or enjoined in a civil action by final judgment
51 involving fraud, embezzlement, fraudulent conversion, or

- 1 misappropriation of property, or (iii) is subject to a currently effective
2 injunctive or restrictive court order, or within the past five years, had
3 any state or federal license or permit suspended or revoked as a result
4 of an action brought by a governmental agency or department.
- 5 (8) A brief summary of the role and responsibilities of the board of directors or
6 other governing body of the provider and, if applicable, the provider's
7 controlling person, including how the members of the board of directors or
8 other governing body are selected and their responsibilities.
- 9 (9) A statement disclosing whether any related party provides, or will provide in
10 the case of a continuing care retirement community under development,
11 goods, leases, or services to the provider of an aggregate value of five
12 thousand dollars (\$5,000) or more within any fiscal year, not already disclosed
13 pursuant to subdivision (7) or (15) of this subsection, and a description of the
14 goods, leases, or services and the actual or probable cost to the provider, or a
15 statement that this cost cannot presently be estimated and the reason why it
16 cannot be presently estimated.
- 17 (10) A statement indicating whether the provider has a relationship with any
18 religious, charitable, or other organization or person, along with the nature and
19 extent of that relationship.
- 20 (11) The name of any other person who will be responsible for the financial and
21 contractual obligations of the provider not already disclosed and the extent of
22 their responsibility.
- 23 (12) A statement as to whether the provider is, or will be, a part of an obligated
24 group and, if so, the names of the other persons in, or to be in, the obligated
25 group.
- 26 (13) A statement as to whether the provider, or any obligated group that the
27 provider is a part of, is not in compliance with any covenant contained in any
28 debt agreement and, if not in compliance, specifying each failure to comply
29 and the steps being taken to cure the noncompliance.
- 30 (14) A statement indicating whether the provider currently employs or will employ
31 a third-party manager for the continuing care retirement community and, if so,
32 the name of the third-party manager employed and their experience in
33 providing management services within the continuing care retirement
34 community industry.
- 35 (15) If the provider is leasing or intends to lease from another person any part of
36 the real property of the continuing care retirement community, a statement
37 disclosing the parties to the lease, the original lease term, and the remaining
38 term of the lease.
- 39 (16) A statement as to whether the provider has endowment funds or has
40 endowment funds available through a related party, that are available to
41 provide financial aid to residents, including a description of the funds and any
42 restrictions on their use.
- 43 (17) The name, address, and description of the physical property or properties of
44 the continuing care retirement community, existing or proposed, and to the
45 extent proposed, the estimated completion date or dates, whether construction
46 has begun, and the contingencies subject to which construction may be
47 deferred.
- 48 (18) The number of existing living units, or the number of living units to be
49 constructed, at the continuing care retirement community.

- 1 (19) If the provider is licensed to provide continuing care at home, a description of
2 the continuing care at home program, including the primary market area
3 served.
- 4 (20) The number or estimated number of residents of the continuing care retirement
5 community to be provided services by the provider pursuant to a continuing
6 care or continuing care at home contract.
- 7 (21) The 12-month daily average occupancy rate at the continuing care retirement
8 community, by living unit type, as of the provider's fiscal year-end for the past
9 five years or for each year of the continuing care retirement community's
10 operation if it has been in operation for less than five years.
- 11 (22) A statement indicating whether the provider held the semiannual meetings
12 required by G.S. 58-64A-360 during the previous fiscal year, including the
13 dates held.
- 14 (23) A description of any property rights of residents in the real property of the
15 continuing care retirement community.
- 16 (24) The services provided or proposed to be provided pursuant to continuing care
17 and continuing care at home contracts, including the extent to which health
18 care is furnished, and a clear statement of which services are included for
19 specified periodic fees and which services are or will be made available for an
20 extra charge. The description shall include a statement describing what health
21 care services are or will be provided by the provider directly and what health
22 care services are or will be provided through a contract with a third party.
- 23 (25) A description of all nonancillary fees required of residents, including entrance
24 fees, periodic fees, transfer fees, and resale fees, if any. The description shall
25 include all of the following:
- 26 a. A statement of the fees that will be charged if a resident marries or
27 otherwise increases the number of persons residing in the resident's
28 living unit while a resident of the continuing care retirement
29 community, and a statement of the terms concerning the entry of a
30 spouse or other person to the continuing care retirement community
31 and the consequences if the spouse or other person does not meet the
32 requirements for entry.
- 33 b. The manner by which the provider may adjust periodic fees and the
34 limitations on the adjustments, if any; and, if the continuing care
35 retirement community is already in operation, a table showing the
36 frequency, average percent increase, and average dollar amount of
37 each increase in periodic fees for the previous five years, or for each
38 year of the continuing care retirement community's and, if applicable,
39 continuing care at home program's operation if it has been in operation
40 for less than five years. If the continuing care retirement community is
41 not yet in operation, the provider shall include a table showing the
42 expected frequency, average percent increase, and average dollar
43 amount of each increase in periodic fees utilized in the five-year
44 prospective financial statements required pursuant to subdivision (37)
45 of this subsection.
- 46 c. A table showing the current entrance fee charges as well as the
47 frequency, average percent increase, and average dollar amount of
48 each increase in entrance fees for the previous five years, or for each
49 year of the continuing care retirement community and, if applicable,
50 continuing care at home program's operation if it has been in operation
51 for less than five years. If the continuing care retirement community is

- 1 not yet in operation, the provider shall include a table showing the
2 expected frequency, average percent increase, and average dollar
3 amount of each increase in entrance fees utilized in the five-year
4 prospective financial statements required pursuant to subdivision (37)
5 of this subsection.
- 6 (26) For providers who offer refundable entrance fee continuing care or continuing
7 care at home contracts, a statement disclosing:
- 8 a. The conditions that must be met before all or any portion of an
9 entrance fee will be refunded.
- 10 b. The number and aggregate dollar amount of refundable entrance fee
11 refunds that, as of the provider's most recent fiscal year-end:
- 12 1. Will be due once all contractual conditions are met.
13 2. Are currently due, including a disclosure of the number and
14 aggregate dollar amount of refunds that are 30 or more days
15 past due.
- 16 3. Will be due, once all conditions are met, to residents who have
17 permanently vacated their independent living unit and now
18 reside in a non-independent living unit provided by the
19 provider.
- 20 4. Will be due to residents who have permanently vacated their
21 independent living unit and now reside in a non-independent
22 living unit provided by the provider whose former independent
23 living unit has already been resold.
- 24 (27) The circumstances under which a resident will be permitted to remain a
25 resident at the continuing care retirement community in the event of possible
26 financial difficulties of the resident.
- 27 (28) The terms and conditions under which a continuing care and continuing care
28 at home contract may be canceled by the provider, or by the resident, and the
29 conditions, if any, under which all or any portion of the entrance fee or any
30 other fee will be refunded in the event of cancellation of the continuing care
31 or continuing care at home contract by the provider, or by the resident, or in
32 the event of the death of the resident, prior to, or following, occupancy of a
33 living unit or the start of services not already disclosed in subdivision (26) of
34 this subsection.
- 35 (29) The conditions under which a living unit occupied by a resident may be made
36 available by the provider to a different or new resident other than on the death
37 of the prior resident.
- 38 (30) The conditions or circumstances under which a provider may require a
39 resident to move from the resident's living unit to another living unit for the
40 safety of the resident or for the good of the provider.
- 41 (31) The health and financial condition required for an individual to be accepted as
42 a resident and to continue as a resident once accepted, including the effect of
43 any change in the health or financial condition of a person between the date
44 of entering into a continuing care or continuing care at home contract and the
45 date of initial occupancy of a living unit or the start of services.
- 46 (32) Any age and insurance requirements for admission.
- 47 (33) The provisions that have been made or will be made, including the
48 requirements of G.S. 58-64A-100 and G.S. 58-64A-245, to provide reserve
49 funding or security to enable the provider to refund entrance fees and deposits
50 when due and to fulfill all of its other obligations under binding reservation
51 agreements, continuing care contracts, and continuing care at home contracts,

1 including the establishment of escrow accounts, trusts, or reserve funds,
2 together with the manner in which these funds will be invested, and the names
3 and experience of any person or persons who will make the investment
4 decisions. The information provided shall also include a schedule detailing
5 how the operating reserve for the continuing care retirement community has
6 been calculated which shall agree with the amount calculated and reported to
7 the Commissioner pursuant to G.S. 58-64A-270.

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

10 (35) An explanation if the provider's most recent audited financial statements were
11 not prepared within 150 days or if an audit opinion was received other than an
12 unqualified opinion.

13 (36) Audited financial statements meeting the requirements of G.S. 58-64A-200.

14 (37) Five-year prospective financial statements of the provider that are either
15 compiled or examined by an independent certified public accountant, that can
16 be prepared on a stand-alone basis, or consolidated or combined with the same
17 persons as the annual audited financial statements filed with the
18 Commissioner pursuant to G.S. 58-64A-200, and that meet all of the
19 following requirements:

20 a. Include a summary of significant assumptions and a summary of
21 significant accounting policies.

22 b. Include, if financial projections, an identification of the hypothetical
23 assumptions and a description of the limitations on the usefulness of
24 the presentation.

25 c. Include as supplemental information, if prepared on a consolidated or
26 combined basis, a consolidating or combining:

27 1. Balance sheet.

28 2. Statement of operations and changes in net assets or equity.

29 3. Statement of cash flows.

30 d. Include a statement of operations as supplemental information for each
31 continuing care retirement community operated under this Article if
32 the provider operates more than one continuing care retirement
33 community or has operations that are separate and distinct from the
34 operation of a continuing care retirement community operating under
35 this Article.

36 e. Contain the same line items and categories as the annual audited
37 financial statements filed with the Commissioner pursuant to
38 G.S. 58-64A-195.

39 f. For continuing care retirement communities that are under
40 development, the prospective financial statements required by this
41 subdivision shall include narrative disclosure detailing all significant
42 assumptions used in the preparation of the prospective financial
43 statements, including all of the following:

44 1. Details of any long-term financing for the purchase or
45 construction of the continuing care retirement community,
46 including interest rate, repayment terms, loan covenants, and
47 assets pledged.

48 2. Details of any leasing agreements where the provider is leasing
49 from another person any part of the real property of the
50 continuing care retirement community, including the length of
51 the lease and the remaining term.

- 1 3. Details of any other funding sources that the provider
- 2 anticipates using to fund any start-up losses or to provide
- 3 reserve funds to assure full performance of the obligations of
- 4 the provider under continuing care contracts.
- 5 4. The total entrance fees to be received from or on behalf of,
- 6 residents at, or prior to, commencement of operations along
- 7 with anticipated accounting methods used in the recognition of
- 8 revenues from and expected refunds of entrance fees.
- 9 5. A description of any equity capital to be received by the
- 10 provider.
- 11 6. The cost of the acquisition of the continuing care retirement
- 12 community or, if the continuing care retirement community is
- 13 to be constructed, the estimated construction cost and cost to
- 14 acquire the land.
- 15 7. Related costs, including financing and development costs, that
- 16 the provider expects to incur or become obligated for prior to
- 17 the commencement of operations.
- 18 8. The marketing and resident acquisition costs to be incurred
- 19 prior to commencement of operations.
- 20 9. A description of the assumptions used for calculating the
- 21 estimated occupancy rate of the continuing care retirement
- 22 community and the effect on the income of the provider of
- 23 government subsidies for health care services.
- 24 (38) A narrative describing the reasons for any material differences between (i) the
- 25 five-year prospective financial statements included as a part of the disclosure
- 26 statement recorded most immediately subsequent to the start of the provider's
- 27 most recently completed fiscal year and (ii) the actual results of operations of
- 28 the provider's most recently completed fiscal year.
- 29 (39) A table detailing the following key financial metrics for the past three fiscal
- 30 years, including the most recent fiscal year, or for each year the provider has
- 31 been in operation if the provider has been in operation for less than three years,
- 32 plus the next three fiscal years, based on the provider's current and prior
- 33 annual audited financial statements and current five-year prospective financial
- 34 statements. If there is a material year over year change in any of the key
- 35 financial metrics, the provider shall include a narrative describing the reasons
- 36 for the material change. For providers who are part of an obligated group, the
- 37 ratios shall be computed for the provider alone and for the obligated group.
- 38 a. Liquidity ratios:
- 39 1. Days cash on hand ratio.
- 40 2. Cushion ratio.
- 41 b. Profitability ratios:
- 42 1. Operating ratio.
- 43 2. Net operating margin ratio.
- 44 3. Adjusted net operating margin ratio.
- 45 c. Capital structure ratios:
- 46 1. Debt service coverage ratio.
- 47 2. Unrestricted cash and investments to long-term debt ratio.
- 48 3. Capital expenditures as a percentage of depreciation expense
- 49 ratio.
- 50 (40) If the provider has had an actuarial study prepared within the prior three years,
- 51 a statement of actuarial opinion which includes a description of the key

- 1 assumptions used to prepare the actuarial study and an opinion on satisfactory
2 actuarial balance.
- 3 (41) A summary of the last examination report issued by the Commissioner, if any,
4 with references to the page numbers of the examination report noting any
5 deficiencies found by the Commissioner, and the actions taken by the provider
6 to rectify those deficiencies, indicating in the summary where the full
7 examination report may be inspected at the continuing care retirement
8 community. The summary required by this subdivision shall not be required
9 if the last examination report is more than three years old.
- 10 (42) Any other material information concerning the continuing care retirement
11 community, the provider, or any related party of the provider, which, if
12 omitted, would lead a reasonable person not to enter a continuing care or
13 continuing care at home contract with the provider.
- 14 (b) A copy of the most common continuing care and continuing care at home contract
15 used by the provider shall be attached to each disclosure statement. To the extent multiple
16 continuing care or continuing care at home contracts are utilized by the provider for the
17 continuing care retirement community, a narrative shall be included within the disclosure
18 statement listing each contract type offered and the material differences of each.
- 19 (c) The cover page of the disclosure statement shall, in a prominent location and in
20 boldface type, include all of the following:
- 21 (1) The date of the disclosure statement.
- 22 (2) The last date through which the disclosure statement may be delivered.
- 23 (3) That the delivery of the disclosure statement to a contracting party before the
24 execution of a binding reservation agreement, continuing care contract, or
25 continuing care at home contract is required by this Article.
- 26 (4) That the disclosure statement has not been reviewed or approved by any
27 government agency or representative to ensure accuracy of the information set
28 out.
- 29 (5) That the disclosure statement has been filed with, and recorded by, the North
30 Carolina Department of Insurance in accordance with this Article.
- 31 (6) That the disclosure statement contains all of the information required by this
32 Article, that it is correct, in all material respects, and that knowingly delivering
33 a disclosure statement that contains an untrue statement or omits a material
34 fact may subject the provider to penalties as set forth in this Article.
- 35 (d) The date on the cover page of the disclosure statement shall coincide with the last day
36 of the provider's fiscal year covered by the information contained within the disclosure statement.
- 37 (e) The disclosure statement shall be in plain English and in language understandable by
38 a layperson and combine conciseness, simplicity, and accuracy to fully advise residents and
39 potential residents of the items required by this section.
- 40 (f) The Commissioner shall review the disclosure statement for completeness but is not
41 required to review the disclosure statement for accuracy.
- 42 (g) The Commissioner may require a provider to alter or amend a disclosure statement to
43 provide full and fair disclosure to residents and prospective residents, and the Commissioner may
44 require the revision of a disclosure statement which the Commissioner finds to be incomplete,
45 unnecessarily complex, voluminous, confusing, or illegible.
- 46 (h) The Commissioner may prescribe a standardized format for the disclosure statement
47 required by this section.
- 48 (i) The Commissioner shall post the current disclosure statement for each continuing care
49 retirement community on the Department's website in accordance with this Article.

50 **§ 58-64A-155. Required delivery of disclosure statement.**

1 (a) A provider shall deliver a current disclosure statement meeting the requirements of
2 G.S. 58-64A-150 to the person or the person's legal representative with whom a binding
3 reservation agreement, continuing care contract, or continuing care at home contract is to be
4 entered into. The disclosure statement shall be delivered no later than the earliest of the following
5 occurrences: (i) the execution of a binding reservation agreement, continuing care contract, or
6 continuing care at home contract, or (ii) the transfer of any money or other consideration, other
7 than a nonbinding reservation agreement deposit, to a provider by or on behalf of a prospective
8 resident. For purposes of this subsection, a disclosure statement is current if (i) it is dated within
9 one year plus 160 days prior to the date of delivery and (ii) it is the most recently recorded
10 disclosure statement on file with the Commissioner.

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

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

18 (2) Both of the following:

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

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

25 (c) After receiving delivery of a disclosure statement pursuant to this section, a
26 prospective resident shall sign an acknowledgement of receipt. The acknowledgement shall
27 include (i) the date, (ii) the name of the person signing, and (iii) the date of the disclosure
28 statement received, including date revised, if any. The provider shall provide a copy of the
29 acknowledgement of receipt to the person signing and shall maintain the original. The
30 acknowledgement of receipt required by this subsection may be received, given, and maintained
31 in either an electronic or paper form.

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

35 **"§ 58-64A-165. Other revisions to disclosure statement.**

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

42 (b) If a disclosure statement is revised in accordance with this section or
43 G.S. 58-64A-150(g), the cover page shall additionally be revised to reflect the revision date.

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

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

2 **"§ 58-64A-170. Binding reservation agreement.**

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

- 4 (1) A provision that the person entering into the agreement may rescind the
5 agreement within 30 days following the later of the following occurrences: (i)
6 the execution of the agreement or (ii) the receipt of a disclosure statement that
7 meets the requirements of G.S. 58-64A-150.
- 8 (2) A provision that the agreement shall be automatically canceled if either of the
9 following occurs: (i) a depositor dies before signing a continuing care contract
10 or (ii) a depositor would be precluded from signing a continuing care contract
11 and occupying a living unit in the continuing care retirement community under
12 the terms of a continuing care contract due to illness, injury, or incapacity.
- 13 (3) A provision that, if an agreement is rescinded, automatically canceled, or
14 otherwise canceled by the depositor, the depositor shall receive a refund of all
15 money or other consideration transferred to the provider. All of the following
16 shall be deducted from the depositor's refund:
- 17 a. Nonstandard costs specifically incurred by the provider at the request
18 of the depositor and described in the agreement.
- 19 b. Any nonrefundable fees specifically set forth in the agreement.
- 20 c. Any service charge specifically set forth in the agreement that shall
21 not exceed the greater of (i) three thousand dollars (\$3,000) or (ii) two
22 percent (2%) of the entrance fee. In no event shall the service charge
23 exceed the amount of consideration transferred to the provider by the
24 depositor or a service charge be assessed due to the termination of the
25 agreement because of the failure of the provider to meet its obligations
26 under the agreement, or upon the failure of the provider to obtain a
27 permanent license in accordance with this Article.
- 28 (4) A provision that any refund due to a depositor for a cancellation or termination
29 for reasons not provided for in this section shall be computed in accordance
30 with the terms of the agreement.

31 **"§ 58-64A-175. Continuing care contract.**

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

- 33 (1) A provision that the person contracting with the provider may rescind the
34 contract within 30 days following the later of (i) the execution of the contract
35 or (ii) the receipt of a disclosure statement that meets the requirements of
36 G.S. 58-64A-150, and a resident to whom the contract pertains is not required
37 to move into the continuing care retirement community before the expiration
38 of the 30-day period.
- 39 (2) A provision that, if a resident dies before occupying a living unit in the
40 continuing care retirement community, or if, on account of illness, injury, or
41 incapacity, a resident would be precluded from occupying a living unit in the
42 continuing care retirement community under the terms of the contract, the
43 contract is automatically canceled.
- 44 (3) A provision that, for rescinded or canceled contracts under this subsection and
45 contracts canceled before a living unit is initially available for occupancy by
46 the first resident of a living unit, the resident or the resident's legal
47 representative, shall receive a refund of all money or other consideration
48 transferred to the provider, less (i) periodic fees specified in the contract and
49 applicable only to the period a living unit was actually occupied by the
50 resident; (ii) those nonstandard costs specifically incurred by the provider at
51 the request of the resident and described in the contract or any contract

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

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

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

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

15 (2) The services to be provided.

16 (3) The policy regarding changing the resident's living unit, if necessary, for the
 17 protection of the health or safety of the resident or the general and economic
 18 welfare of other residents.

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

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

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

23 (7) A description of the living unit.

24 (8) Any property rights of the resident.

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

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

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

32 "NOTICE

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

39 "Part 7. Continuing Care at Home.

40 "§ 58-64A-180. Home care services defined.

41 As used in this Part, "home care services" is defined in G.S. 131E-136.

42 "§ 58-64A-185. Application.

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

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

48 (2) A draft amended disclosure statement containing a description of the proposed
 49 continuing care at home program, including the primary market area to be
 50 served, the types of services to be provided, and the fees to be charged.

51 (3) A copy of the proposed continuing care at home contract.

- 1 (4) An actuarial study prepared in accordance with accepted actuarial standards
2 of practice which estimates when the continuing care at home program is
3 projected to be in satisfactory actuarial balance. Providers who do not collect
4 entrance fees or some other type of up-front prepayment of costs are exempt
5 from this requirement and shall only be required to submit an actuarial
6 projection of future population flows and adult care home bed and nursing bed
7 needs using appropriate mortality, morbidity, withdrawal, occupancy, and
8 other demographic assumptions, and using a projection period that extends to
9 a point at which, in the actuary's professional judgment, the use of a longer
10 period would not materially affect the results and conclusions.
- 11 (5) A market study prepared by a person experienced in the preparation of market
12 studies for continuing care at home or similar programs that demonstrates
13 sufficient interest in a continuing care at home program.
- 14 (6) Prospective financial statements prepared by an independent certified public
15 accountant that show the financial impact of providing continuing care at
16 home on the provider and the continuing care retirement community. The
17 prospective financial statements shall include a statement of activities
18 reporting the revenue and expense details for providing continuing care at
19 home, as well as the impact the program will have on the operations of the
20 provider and the continuing care retirement community, including the
21 operating reserve.
- 22 (7) Evidence of the license required under Part 3 of Article 6 of Chapter 131E of
23 the General Statutes to provide home care services, or a contract with a
24 licensed home care agency for the provision of home care services to be
25 provided to residents under the continuing care at home program.
- 26 (b) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in
27 response to an application for a continuing care at home license.
- 28 (c) The Commissioner shall approve an application for a continuing care at home license
29 if all of the following requirements are met:
- 30 (1) The application complies with this section.
- 31 (2) None of the grounds for denial listed in G.S. 58-64A-280 apply to the
32 applicant.
- 33 (3) The applicant is able to provide continuing care at home as proposed.
- 34 (4) There is sufficient consumer interest in the continuing care at home program
35 proposed by the applicant, as evidenced by the market study.
- 36 (5) The program proposed by the applicant will not have a detrimental financial
37 impact on the applicant and continuing care retirement community, as
38 determined by the Commissioner.
- 39 (d) After receiving a continuing care at home license, the provider may arrange or provide
40 continuing care at home and shall file an amended disclosure statement with the Commissioner
41 which contains the information regarding continuing care at home required by G.S. 58-64A-150.
- 42 (e) After the issuance of a continuing care at home license, the Commissioner shall
43 require a provider to submit periodic reports in a form prescribed by the Commissioner to monitor
44 the status of the continuing care at home program.
- 45 **§ 58-64A-190. Continuing care at home contract.**
- 46 (a) A continuing care at home contract shall include all of the following provisions:
- 47 (1) A provision that the individual contracting with the provider may rescind the
48 contract within 30 days following the later of (i) the execution of the contract
49 or (ii) the receipt of a disclosure statement that meets the requirements of
50 G.S. 58-64A-150.

1 **"§ 58-64A-195. General requirements related to filing and extensions for filing of annual**
2 **audited financial statements.**

3 (a) All providers shall have an annual audit by an independent certified public accountant
4 and shall file audited financial statements with the Commissioner within 150 days following the
5 end of each fiscal year.

6 (b) Extensions of the filing date may be granted by the Commissioner for 30-day periods
7 upon a showing by the provider and its independent certified public accountant of the reasons for
8 requesting an extension and determination by the Commissioner of good cause for an extension.
9 The request for extension must be received in writing not less than 10 days before the due date
10 and in sufficient detail to permit the Commissioner to make an informed decision with respect to
11 the requested extension.

12 (c) If an initial extension is granted in accordance with the provisions in subsection (b)
13 of this section, a similar extension of 30 days is granted for the filing of the provider's annual
14 disclosure statement.

15 **"§ 58-64A-200. Contents of annual audited financial statements.**

16 (a) The annual audited financial statements shall report the financial position of the
17 provider as of the end of the most recent fiscal year and the results of its operations, cash flows,
18 and changes in equity or net assets for the year then ended. The audited financial statements shall
19 be comparative, presenting the amounts as of the end of the most current year-end and the
20 amounts as of the immediately preceding year-end. However, in the first year in which a provider
21 is required to file audited financial statements, the comparative data may be omitted.

22 (b) The audited financial statements shall include the following:

23 (1) Report of independent certified public accountant.

24 (2) Balance sheet reporting assets, liabilities, and net assets or equity.

25 (3) Statement of operations.

26 (4) Statement of cash flows.

27 (5) Statement of changes in net assets or equity.

28 (6) Notes to financial statements.

29 (c) The audited financial statements shall be prepared in accordance with one of the
30 following requirements:

31 (1) If a provider is required by generally accepted accounting principles to have
32 their financial statements consolidated with other persons, the audited
33 consolidated financial statements shall include a consolidating balance sheet,
34 a consolidating statement of operations and changes in net assets or equity,
35 and a consolidating statement of cash flows as supplemental information to
36 the audited consolidated financial statements. This supplemental information
37 shall also include a statement of operations for each continuing care retirement
38 community operated by the provider under this Article.

39 (2) If the provider includes one or more persons acting in concert to offer and
40 provide continuing care, the audited financial statements shall be combined
41 and shall include a combining balance sheet, a combining statement of
42 operations and changes in net assets or equity, and a combining statement of
43 cash flows as supplemental information to the audited combined financial
44 statements. This supplemental information shall also include a statement of
45 operations for each continuing care retirement community operated by the
46 provider under this Article.

47 (3) If a provider is part of an obligated group, the audited financial statements
48 shall be either consolidated or combined with the other members of the
49 obligated group and shall include a combining or consolidating balance sheet,
50 a combining or consolidating statement of operations and changes in net assets
51 or equity, and a combining or consolidating statement of cash flows as

1 supplemental information to the audited combined or consolidated financial
2 statements. This supplemental information shall also include a statement of
3 operations for each continuing care retirement community operated by the
4 provider under this Article.

5 (4) If the provider is not required by generally accepted accounting principles to
6 have their financial statements consolidated with other persons, does not
7 include one or more persons acting in concert to offer and provide continuing
8 care, and is not part of an obligated group, then the audited financial
9 statements shall be a stand-alone financial audit of the provider. The audited
10 financial statements must include as supplemental information, if the provider
11 operates more than one continuing care retirement community or has
12 operations that are separate and distinct from the operation of a continuing
13 care retirement community or communities under this Article, a statement of
14 operations for each continuing care retirement community operated by the
15 provider under this Article.

16 (d) If a provider is also licensed to provide continuing care at home, the audited financial
17 statements shall account for the related revenue and expenses generated from the continuing care
18 at home program separate from the provider's other operations when providing the information
19 required by this section.

20 **"§ 58-64A-205. Quarterly reporting.**

21 Within 45 days after the end of each fiscal quarter, a provider shall file with the
22 Commissioner all of the following:

23 (1) Quarterly unaudited financial statements of the provider and any obligated
24 group of which the provider is a member, which shall include a balance sheet,
25 a statement of operations, and a statement of cash flows, which shall contain
26 the same categories and line items as the annual audited financial statements
27 filed with the Commissioner pursuant to G.S. 58-64A-195.

28 (2) The 12-month daily average occupancy rate by living unit type at each
29 continuing care retirement community operated by the provider in this State
30 in a form prescribed by the Commissioner.

31 (3) Notice of the following:

32 a. Any change in the provider's or the provider's controlling person's
33 board of directors or other governing body, president, chief executive
34 officer, and chief financial officer. Notice shall include the name of
35 the provider, the name of the controlling person, if applicable, the
36 name of the person previously holding the position, the name of the
37 person currently holding the position, a brief biography of the person
38 currently holding the position, and the date the position change took
39 place.

40 b. Any change in the organizational documents of the provider, including
41 changes in the provider's articles of incorporation and bylaws. Copies
42 of the changed documents shall be submitted with the notification to
43 the Commissioner.

44 **"§ 58-64A-210. Actuarial study.**

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

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

- 1 (2) A description of the transaction and the terms of the transaction.
2 (3) A description of the financial impact on the applicant.
3 (4) If applicable, a plan for ensuring performance of existing continuing care and
4 continuing care at home contract obligations.
5 (5) Any other information reasonably required by the Commissioner.

6 (e) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in
7 response to a request for approval pursuant to this section.

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

10 (1) The request complies with this section.
11 (2) None of the grounds for denial listed in G.S. 58-64A-280 apply to the
12 applicant.

13 (3) The transaction does not jeopardize the financial stability of the applicant or
14 prejudice the interest of residents.

15 (g) A provider shall give written notice to all affected residents and depositors of the
16 proposed transaction within 10 business days after receiving approval from the Commissioner.

17 (h) The Commissioner may revoke or restrict the certificate or license of a provider or
18 take other administrative action pursuant to Part 12 of this Article if a provider violates the
19 provisions of this section.

20 **"§ 58-64A-235. Change of control of a provider.**

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

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

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

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

33 b. A description of the business intended to be done by the person and
34 the person's related parties.

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

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

42 (2) The source, nature, and amount of the consideration used or to be used in
43 effecting the merger or other acquisition of control; a description of any
44 transaction wherein funds were or are to be obtained for that purpose,
45 including any pledge of the provider's stock, or the stock of any of its
46 subsidiaries or controlling persons; and the identity of persons providing the
47 consideration.

48 (3) Fully audited financial information as to the earnings and financial condition
49 of each acquiring person for the preceding five fiscal years, or for a lesser
50 period as the acquiring person and any predecessors have been in existence,

- 1 and similar unaudited information as of a date not earlier than 90 days prior
2 to the filing of the written notice.
- 3 (4) Any plans or proposals that each acquiring person may have to liquidate the
4 provider, or any continuing care retirement community operated by the
5 provider in this State, to sell its assets or merge or consolidate it with any
6 person, or to make any other material change in its business or corporate
7 structure or management.
- 8 (5) A description of the effect, if any, that the merger or other acquisition of
9 control will have on the financial condition of the provider.
- 10 (6) A description of any change in the provision of goods and services to the
11 provider and residents.
- 12 (7) A description of any agreements made or to be made with residents which will
13 amend any continuing care or continuing care at home contract at the time of
14 the transfer of control.
- 15 (8) A description of any service or contractual obligation with residents which
16 will change as a result of the change in control.
- 17 (9) Any additional information as the Commissioner may require as necessary or
18 appropriate for the protection of residents or in the public interest.
- 19 (c) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in
20 response to a request for approval pursuant to this section.
- 21 (d) The Commissioner shall approve a request for approval pursuant to this section if all
22 of the following requirements are met:
- 23 (1) The request for approval complies with this section.
- 24 (2) None of the grounds for denial listed in G.S. 58-64A-280 apply to the
25 applicant.
- 26 (3) After the change of control, the provider will be able to satisfy the certification
27 or licensure requirements, as applicable, of this Article.
- 28 (4) The financial condition of any acquiring person will not jeopardize the
29 financial stability of the provider or prejudice the interest of any residents.
- 30 (5) Any plans or proposals that any acquiring person has to liquidate the provider,
31 or any continuing care retirement community operated by the provider in this
32 State, sell its assets or consolidate or merge it with any person, or to make any
33 other material change in its business or corporate structure or management,
34 are fair and reasonable to residents and in the public interest.
- 35 (6) The competence, experience, and integrity of those persons who would
36 control the operation of the provider are such that the change of control will
37 not harm the interests of residents or of the public.
- 38 (e) A provider shall give written notice to all affected residents and depositors of the
39 proposed merger or other acquisition of control within 10 business days after the acquiring person
40 has received approval from the Commissioner.
- 41 (f) The Commissioner may revoke or restrict the license or certificate of a provider or
42 take other administrative action pursuant to Part 12 of this Article if a provider violates the
43 provisions of this section.
- 44 **§ 58-64A-240. Third-party management.**
- 45 (a) A provider shall request the approval of the Commissioner before entering into a
46 contract with a third party for the management of a continuing care retirement community. The
47 request for approval required by this section shall include a copy of the proposed management
48 contract, the information required by subdivisions (6) and (7) of G.S. 58-64A-150(a) regarding
49 the proposed third-party manager, a description of the third party's experience in managing
50 continuing care retirement communities, and the reason for the change in management.

1 (b) The provider shall inform all residents in writing of the request for approval submitted
2 to the Commissioner pursuant to this section within 10 business days after the request for
3 approval is submitted to the Commissioner.

4 (c) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in
5 response to a request for approval pursuant to this section.

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

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

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

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

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

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

28 "Part 11. Operating Reserve.

29 **"§ 58-64A-245. Operating reserve requirement.**

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

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

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

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

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

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

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

17 **"§ 58-64A-250. Operating reserve calculation.**

18 (a) The five-year prospective financial statements as required by
19 G.S. 58-64A-150(a)(37), together with the 12-month daily average independent living unit
20 occupancy rate of the continuing care retirement community, shall serve as the basis for
21 computing the operating reserve. A provider shall calculate and adjust, if necessary, the required
22 operating reserve on at least a semiannual basis, including the date the operating reserve is
23 certified in accordance with G.S. 58-64A-270.

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

30 (c) A provider shall apply in writing for a determination by the Commissioner in order
31 to exclude extraordinary items from total operating costs and shall provide documentation to
32 support the request. The Commissioner shall comply with the review schedule in G.S. 58-64A-70
33 in response to a request for approval pursuant to this subsection.

34 (d) For providers that have voluntarily and permanently discontinued entering into
35 continuing care contracts, or who operate a continuing care retirement community where not all
36 occupants are under continuing care contracts, the Commissioner may allow a reduced operating
37 reserve if the Commissioner finds that the reduction is consistent with the financial protections
38 imposed by this Article. In making this determination, the Commissioner may consider factors
39 including the financial condition of the provider, the number of outstanding continuing care
40 contracts, the ratio of persons under continuing care contracts to those persons who do not hold
41 a continuing care contract, and the 12-month daily average independent living unit occupancy
42 rate.

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

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

"§ 58-64A-255. Qualifying assets.

- (a) A provider shall fund its operating reserve with any of the following qualifying assets:
- (1) Cash.
 - (2) Cash equivalents.
 - (3) Investment grade securities. For the purposes of this subdivision, investment grade securities are any of the following:
 - a. Securities issued or directly and fully guaranteed or insured by the government of the United States of America or any of its agencies or instrumentalities.
 - b. Debt securities or debt instruments with a rating of BBB- or higher by Standard & Poor's or Baa3 or higher by Moody's, or, if no rating of Standard & Poor's or Moody's then exists, the equivalent of that rating by any other nationally recognized statistical rating organizations maintained by the National Association of Insurance Commissioners.
 - c. Investments in any fund that invests exclusively in investments of the type described in sub-subdivision a. or b. of this subdivision, which fund may also hold immaterial amounts of cash pending investment or distribution.
 - (4) Corporate stock that is traded on a public securities exchange that can be readily valued and liquidated for cash, including shares in mutual funds and exchange-traded funds that hold portfolios consisting predominantly of these stocks.
 - (5) Other assets considered to be acceptable to the Commissioner on a case-by-case basis.
- (b) Except as otherwise provided in this subsection, the assets maintained by the provider as an operating reserve for a continuing care retirement community operated by the provider under this Article shall not be subject to any liens, charges, judgments, garnishments, or creditors' claims and shall not be hypothecated, pledged as collateral, or otherwise encumbered in any manner. A provider may encumber assets held as an operating reserve as part of a security pledge of assets or similar collateralization that is part of the provider's debt financing and is included in the provider's debt indenture security instruments related thereto or other similar instrument.
- (c) For the purpose of calculating the amount to be maintained by the provider to satisfy its operating reserve requirement, all qualifying assets shall be valued at their current fair market value.

"§ 58-64A-260. Surety bond; letter of credit.

(a) Alternative Funding Methods. – In lieu of funding the operating reserve with qualifying assets as set forth in G.S. 58-64A-255, a provider may fund all or a portion of the operating reserve required by this Part by filing with the Commissioner a surety bond or letter of credit as set forth in this section.

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

- (1) The surety bond may be exchanged or replaced with another surety bond if (i) the surety bond applies to obligations and liabilities that arose during the period of the original surety bond, (ii) the surety bond meets the requirements of this section, and (iii) 90 days' advance written notice is provided to the Commissioner.
- (2) Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the provider and the Commissioner in writing at least 45 days before cancellation or nonrenewal.

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

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

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

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

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

20 **"§ 58-64A-265. Operating reserve release.**

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

25 (b) In order to receive the approval of the Commissioner, a provider shall explain why a
26 release is necessary and, if applicable, submit a repayment schedule to replenish the operating
27 reserve to the amount required by G.S. 58-64A-245. Within five business days after the date a
28 request is deemed complete, the Commissioner shall provide the provider with a written notice
29 of approval or disapproval of the request. The Commissioner may disapprove any request to
30 release the funds if it is determined that the release is not in the best interest of residents.

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

34 **"§ 58-64A-270. Operating reserve certification.**

35 At the time a provider files its annual audited financial statements pursuant to
36 G.S. 58-64A-195, a provider shall file a form acceptable to the Commissioner computing,
37 reporting, and certifying all of the following:

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

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

43 (3) A description of the qualifying assets or other form of security and, if
44 applicable, their respective values, as defined and valued in accordance with
45 G.S. 58-64A-255, that the provider maintains for its operating reserve.

46 "Part 12. Offenses and Penalties.

47 **"§ 58-64A-275. Definition of impairment.**

48 As used in this Part, "impaired" means a weakened financial state or condition that may affect
49 a provider's ability to pay its obligations as they come due in the normal course of business.

50 **"§ 58-64A-280. 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 audited financial
11 statements, or any other materials requested by the Commissioner or
12 otherwise required by this Article.
13 (6) Failed to deliver to prospective residents a disclosure statement as required by
14 this Article.
15 (7) Delivered to prospective residents a disclosure statement that makes a material
16 misstatement or omits a material fact and the provider, at the time of the
17 delivery of the disclosure statement, had actual knowledge of the misstatement
18 or omission.
19 (8) Failed to make a revised disclosure statement available to residents.
20 (9) Made any material misrepresentations to depositors, prospective residents, or
21 residents of a continuing care retirement community operated or to be
22 operated in this State.
23 (10) Failed to maintain the escrow account required under this Article or released
24 a portion of an escrow account required to be maintained under this Article.
25 (11) Failed to deposit entrance fees and deposits into an escrow account as required
26 by this Article.
27 (12) Failed to maintain the operating reserve required under this Article or released
28 a portion of the operating reserve required to be maintained under this Article
29 without Commissioner approval.
30 (13) Violated a restriction of its permit, certificate, or license.
31 (14) After request by the Commissioner for an investigation or examination,
32 refused access to records or information; refused to be investigated or
33 examined or to produce its accounts, records, and files for an investigation or
34 examination; refused to give information with respect to its affairs; or refused
35 to perform any other legal obligations related to an investigation or
36 examination.
37 (15) Failed to fulfill obligations under continuing care and continuing care at home
38 contracts.
39 (16) Violated the provisions of G.S. 58-64A-230, 58-64A-235, or 58-64A-240.
40 (17) Failed to comply with the terms of a cease and desist order.
41 (18) Has been determined by the Commissioner to be in a hazardous condition.

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

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

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

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

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

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

12 (h) A provider who has their permanent license revoked shall continue to maintain an
13 operating reserve and to file its annual audited financial statements, annual disclosure statement,
14 and pay annual fees to the Commissioner as required under this Article as if the permanent license
15 had continued in full force, but the provider shall not issue any new continuing care or continuing
16 care at home contracts.

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

21 **"§ 58-64A-285. Hazardous condition.**

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

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

25 (2) Adverse findings reported in examination reports, audit financial statements,
26 and actuarial opinions, reports, or summaries.

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

29 (4) Whether the provider is contractually past due on entrance fee refunds.

30 (5) The age and collectability of receivables.

31 (6) Whether a related party is impaired, insolvent, bankrupt, or threatened with
32 insolvency or bankruptcy, or delinquent in payment of its monetary or any
33 other obligations and which in the opinion of the Commissioner may affect
34 the solvency of the provider.

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

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

41 (9) Contingent liabilities, pledges, or guaranties that either individually or
42 collectively involve a total amount that in the Commissioner's opinion may
43 affect a provider's solvency.

44 (10) Whether the management of a provider, including officers, directors, or any
45 other person who directly or indirectly controls the operations of an applicant,
46 provider, or continuing care retirement community, fails to possess and
47 demonstrate the competence, experience, or integrity considered by the
48 Commissioner to be necessary to serve the provider or continuing care
49 retirement community in that position.

50 (11) Whether the management of a provider has failed to respond to the
51 Commissioner's inquiries about the condition of the applicant or provider or

1 has furnished false and misleading information in response to an inquiry by
2 the Commissioner.

3 (12) Whether the applicant or provider has failed to meet financial, disclosure
4 statement, or other filing requirements in the absence of a reason satisfactory
5 to the Commissioner.

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

11 (14) Whether the applicant or provider has experienced or will experience in the
12 foreseeable future cash flow or liquidity problems.

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

15 **"§ 58-64A-290. Corrective action plan.**

16 (a) If the Commissioner has determined that a provider is in a hazardous condition, the
17 Commissioner may, in lieu of taking action under G.S. 58-64A-280 or G.S. 58-64A-335, and
18 after notice and opportunity for hearing, issue an order requiring a provider to (i) submit a
19 corrective action plan within 45 days and (ii) notify all residents and depositors within five
20 business days of the Commissioner's order. The corrective action plan shall include both of the
21 following:

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

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

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

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

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

48 (e) The provider shall distribute its approved corrective action plan and its most recent
49 report to the Commissioner to a prospective resident at the time the provider distributes its current
50 disclosure statement pursuant to G.S. 58-64A-155. Subsections (b) and (c) of G.S. 58-64A-155

1 shall apply to the corrective action plan and the most recent report to the Commissioner required
2 to be distributed pursuant to this subsection.

3 **"§ 58-64A-295. Investigations and subpoenas.**

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

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

11 (c) For the purpose of any investigation or proceeding under this Article, the
12 Commissioner or the Commissioner's designee may exercise all powers granted to the
13 Commissioner with respect to insurance companies.

14 **"§ 58-64A-300. Civil liability.**

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

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

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

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

40 **"§ 58-64A-305. Criminal penalties.**

41 (a) Any person who willfully and knowingly violates any provision of this Article is
42 guilty of a Class 1 misdemeanor. The Commissioner may refer any available evidence concerning
43 a violation of this Article, or of any rule adopted or order issued pursuant to this Article, to the
44 Attorney General or a district attorney. The Attorney General or a district attorney may institute
45 the appropriate criminal proceedings under this Article, with or without evidentiary referral from
46 the Commissioner. Nothing in this Article limits the power of the State to punish any person for
47 any conduct that constitutes a crime under any other statute.

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

51 **"§ 58-64A-310. Forfeiture.**

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

- 4 (1) The provider terminates marketing a proposed continuing care retirement
5 community.
6 (2) The provider surrenders to the Commissioner its permit, certificate, or license.
7 (3) The provider sells or otherwise transfers all or part of a continuing care
8 retirement community without the Commissioner's approval in accordance
9 with G.S. 58-64A-230.
10 (4) A change occurs in the control of the provider without the Commissioner's
11 approval in accordance with G.S. 58-64A-235.
12 (5) The provider merges with another person without the Commissioner's
13 approval in accordance with G.S. 58-64A-235.
14 (6) The provider moves the continuing care retirement community from one
15 location to another without the Commissioner's prior approval.
16 (7) The provider abandons the continuing care retirement community or its
17 obligations under continuing care and continuing care at home contracts.
18 (8) The provider is evicted from the structures that make up the continuing care
19 retirement community.
20 (9) The provider closes a continuing care retirement community.

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

23 **"§ 58-64A-315. Remedies available in cases of unlawful contracting.**

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

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

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

46 **"§ 58-64A-325. Nonexclusive remedies.**

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

50 **"§ 58-64A-330. Soliciting or accepting new agreements or contracts by impaired or**
51 **insolvent providers.**

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

10 "Part 13. Delinquency Proceedings.

11 **"§ 58-64A-335. Supervision, rehabilitation, and liquidation.**

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

- 19 (1) A portion of an escrow account or operating reserve required to be maintained
20 under this Article has been or is proposed to be released in violation of this
21 Article.
- 22 (2) A provider has been or will be unable to fully perform its obligations pursuant
23 to continuing care and continuing care at home contracts, or to meet
24 prospective financial data previously filed by the provider.
- 25 (3) A provider has failed to maintain the escrow account required under this
26 Article.
- 27 (4) A provider is in a hazardous condition.
- 28 (5) A provider is bankrupt or insolvent, or in imminent danger of becoming
29 bankrupt or insolvent.

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

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

36 (d) If, at any time, the Court finds, upon petition of the Commissioner, a provider, or on
37 its own motion, that the objectives of an order to rehabilitate a provider have been accomplished
38 and that the continuing care retirement community or communities owned by, or operated by,
39 the provider can be returned to the provider's management without further jeopardy to the
40 residents or depositors of the continuing care retirement community or communities, the Court
41 may, upon a full report and accounting of the conduct of the provider's affairs during the
42 rehabilitation and of the provider's current financial condition, terminate the rehabilitation and,
43 by order, return the continuing care retirement community or communities owned by, or operated
44 by, the provider, along with the assets and affairs of the provider, to the provider's management.

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

48 (f) An order for rehabilitation shall be refused or vacated if the provider posts a bond, by
49 a recognized surety authorized to do business in this State and executed in favor of the
50 Commissioner on behalf of persons who may be found entitled to a refund of entrance fees and
51 deposits from the provider or other damages in the event the provider is unable to fulfill its

1 contracts to provide continuing care, in an amount determined by the Court to be equal to the
2 reserve funding that would otherwise need to be available to fulfill the provider's obligations.

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

4 **"§ 58-64A-340. Receiverships; exception for long-term care facility beds.**

5 When the Commissioner has been appointed as a receiver under Article 30 of this Chapter
6 for a provider or a continuing care retirement community subject to this Article, the Department
7 of Health and Human Services may, notwithstanding any other provision of law, accept and
8 approve the addition of adult care home beds or nursing beds for a continuing care retirement
9 community owned by, or operated by, the provider, if it appears to the Court, upon petition of
10 the Commissioner or the provider, or on the Court's own motion, that (i) the best interests of the
11 provider or (ii) the welfare of persons who have previously contracted with the provider or may
12 contract with the provider may be best served by the addition of adult care home beds or nursing
13 beds.

14 **"§ 58-64A-345. Contracts as preferred claims in liquidation.**

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

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

21 "Part 14. Residents' Rights to Organization and Semiannual Meetings.

22 **"§ 58-64A-350. Definition of residents' council.**

23 As used in this Part, "residents' council" means a group duly elected by residents at a
24 continuing care retirement community to advocate for residents' rights and to serve as a liaison
25 between residents and the provider with respect to resident welfare and interests.

26 **"§ 58-64A-355. Right to organization.**

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

33 **"§ 58-64A-360. Semiannual meetings.**

34 (a) The board of directors or other governing body of a provider or its designated
35 representative shall hold in-person semiannual meetings with the residents of each continuing
36 care retirement community operated by the provider in this State for free discussions of subjects,
37 including, but not limited to, income, expenditures, financial trends and problems, and proposed
38 changes in policies, programs, and services as they apply to the provider, the continuing care
39 retirement community, and the continuing care retirement community's residents. For the
40 purposes of this section, a semiannual meeting shall be a single meeting that is open to all
41 residents and not a series of meetings with individual residents. Nothing in this section shall
42 prevent a provider from making a semiannual meeting available via electronic means to residents
43 of the continuing care retirement community who are unable to attend in person.

44 (b) At least one independent member of the board of directors or other governing body
45 of the provider shall attend the semiannual meetings in person. A provider may apply to the
46 Commissioner for a waiver from the requirement of this subsection based on unique
47 circumstances.

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

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

- 7 (1) Telephone.
- 8 (2) Video conference.
- 9 (3) Video broadcast.

10 (e) If a semiannual meeting is held under subsection (d) of this section, notice of the
11 method residents may use to attend the meeting shall be published with the notice of the meeting.
12 The meeting shall be recorded in the format in which it is conducted. Acceptable recording
13 formats include, but are not limited to, all of the following:

- 14 (1) A sound-only recording.
- 15 (2) A video recording with sound and picture.
- 16 (3) A digital or analog broadcast capable of being recorded.

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

19 (g) A provider shall report in the disclosure statement required under G.S. 58-64A-150
20 the dates on which the semiannual meetings were held during the provider's previous fiscal year.

21 "Part 15. Miscellaneous Provisions.

22 **"§ 58-64A-365. Waiver of statutory protection.**

23 No act, agreement, or statement of any resident, or of an individual purchasing continuing
24 care for a resident under any continuing care or continuing care at home contract shall constitute
25 a valid waiver of any provision of this Article intended for the benefit or protection of the resident
26 or the individual purchasing continuing care for the resident.

27 **"§ 58-64A-370. Continuing Care Advisory Committee.**

28 (a) There shall be a 12-member Continuing Care Advisory Committee appointed by the
29 Commissioner. The Committee shall be comprised of providers, residents, and professionals
30 involved in the continuing care retirement community industry. At a minimum, the Committee
31 shall include at least two representatives of, and nominated by, the North Carolina Continuing
32 Care Residents Association and two representatives of, and nominated by, LeadingAge North
33 Carolina.

34 (b) The Committee shall meet all of the following requirements:

- 35 (1) Meet at least twice per year.
- 36 (2) Hold other meetings at times and places as the Committee chair may direct.
- 37 (3) Act in an advisory capacity to the Commissioner on matters pertaining to the
38 operation and regulation of continuing care retirement communities and
39 continuing care at home programs.
- 40 (4) Report to the Commissioner on developments in the continuing care
41 retirement community industry, including continuing care at home and similar
42 programs, and problems or concerns of providers and residents.
- 43 (5) Recommend changes in relevant statutes and rules.

44 (c) The term of each Committee member shall be three years, but each Committee
45 member shall serve until a successor has been appointed. Committee members may serve two
46 consecutive terms. Any appointment to fill a vacancy on the Committee created by resignation,
47 dismissal, death, or disability of a member shall be for the remainder of the unexpired term.

48 (d) Committee members shall serve without pay but shall be reimbursed for travel
49 expenses by the Department at the rates set out in G.S. 138-6.

50 **"§ 58-64A-375. Other licensing or regulation.**

1 (a) Nothing in this Article affects the authority of the Department of Health and Human
2 Services or any successor agency otherwise provided by law to license or regulate any long-term
3 care facility.

4 (b) Continuing care retirement communities and providers licensed under this Article that
5 are also subject to the provisions of the North Carolina Condominium Act under Chapter 47C of
6 the General Statutes shall not be subject to the provisions of Chapter 39A of the General Statutes,
7 provided that the continuing care retirement community's declaration of condominium does not
8 require the payment of any fee or charge not otherwise provided for in a resident's continuing
9 care contract, or other separate contract for the provisions of membership or services.

10 **"§ 58-64A-380. Examination.**

11 (a) The Commissioner or the Commissioner's designee may, in the Commissioner's
12 discretion, visit a provider offering continuing care in this State to examine its books and records.
13 Expenses incurred by the Commissioner in conducting examinations under this section shall be
14 paid by the provider examined.

15 (b) The provisions of G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-155, 58-2-180,
16 58-2-185, and 58-6-5 apply to this Article and are hereby incorporated by reference.

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

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

23 **SECTION 3.** This act becomes effective December 1, 2025, and applies to (i)
24 offenses committed on or after that date and (ii) contracts issued, renewed, or amended on or
25 after that date.