

STATE OF NEW YORK

6450

2017-2018 Regular Sessions

IN ASSEMBLY

March 7, 2017

Introduced by M. of A. SCHIMMINGER, GOTTFRIED, MORELLE, LUPARDO -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to promoting the development, expansion and efficient operation of continuing care retirement communities; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs e and f of subdivision 2-b of section 4601 of
2 the public health law, as amended by chapter 7 of the laws of 2015, are
3 amended and a new paragraph g is added to read as follows:

4 e. communities established under this article and offering fee-for-
5 service continuing care contracts must offer, along with such fee-for-
6 service continuing care contracts, life care and/or continuing care
7 contracts as defined in subdivision eight-a of this section; ~~[and]~~

8 f. communities established under this article offering continuing care
9 at home contracts must also offer continuing care retirement contracts
10 and must maintain a continuing care retirement community that operates
11 in support of the continuing care at home contracts~~[-]~~; and

12 g. for purposes of this article, any reference to "continuing care
13 retirement community" or "community" shall also apply to the term "life
14 plan community".

15 § 2. Paragraph a of subdivision 8 of section 4651 of the public health
16 law, as amended by chapter 545 of the laws of 2004, is amended to read
17 as follows:

18 a. "Fee-for-service continuing care retirement community" or "communi-
19 ty" shall mean a facility or facilities established pursuant to this
20 article to provide a comprehensive, cohesive living arrangement for the
21 elderly, oriented to the enhancement of the quality of life, pursuant to
22 the terms of the fee-for-service continuing care contract on a fee-for-
23 service schedule. Such facility, at a minimum, shall provide access to

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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on-site geriatric services, including, but not limited to, nursing facility services, services provided by an adult care facility, home health services, a meal plan, social services and independent living units. For purposes of this article, any reference to "fee-for-service continuing care retirement community" or "community" shall also apply to the term "life plan community".

§ 3. Section 4602 of the public health law, as added by chapter 689 of the laws of 1989, the section heading and subdivisions 1 and 2 as amended by chapter 659 of the laws of 1997, the opening paragraph of subdivision 1 as amended by section 81 of part A of chapter 62 of the laws of 2011, the opening paragraph of subdivision 2 as amended by chapter 549 of the laws of 2014, subdivision 3 as amended by chapter 155 of the laws of 2012, is amended to read as follows:

§ 4602. Continuing care retirement community council; powers and duties. 1. The continuing care retirement community council is hereby established, to consist of the following, or their designees: the attorney general; the commissioner; the director of the office for the aging; and eight public members appointed by the governor with the advice and consent of the senate. Such public members shall be representative of the public, and have a demonstrated expertise or interest in continuing care retirement communities; provided that no ~~[more]~~ less than ~~[one]~~ three such ~~[member]~~ members shall be a sponsor, owner, operator, manager, member of a board of directors, or shareholder of a continuing care retirement community. At least two public members shall be residents of a continuing care retirement community. At least one of the public members shall be a representative of an organization with demonstrated experience in representing the interests of senior citizens. The public members of the council shall have fixed terms of four years. The council shall be chaired by the commissioner or his or her designee.

Members of such council shall serve without compensation for their services as members of the council, except that each of them may be allowed the necessary and actual expenses which ~~[he]~~ they shall incur in the performance of ~~[his]~~ their duties under this article.

2. The council shall meet as often as may be deemed necessary to fulfill its responsibilities. The council shall have the following powers and duties:

a. to ~~[approve or reject applications to obtain a certificate of authority for the establishment and operation of a continuing care retirement community. In reviewing applications, the council shall consider the extent to which the applications reflect various sponsorships, organizational structures, geographic dispersion, and the public benefit. In determining the public benefit of a community requiring construction of a total nursing facility component greater than or equal to ninety beds, the council shall obtain and consider the recommendation of the state hospital review and planning council with regard to the effect of the construction of the community's nursing facility beds upon existing facilities in the same geographic area]~~ assist the commissioner on policy matters related to the establishment and operation of continuing care retirement communities;

b. to ~~[require the reporting of such facts and information as the council may deem necessary to enforce the provisions of this article;]~~ assist the commissioner in the development of the state's overall policy regarding continuing care retirement communities and cause studies and research to be conducted as it may deem advisable and necessary; and

c. ~~[to coordinate the oversight of operating communities and to assign review and regulatory responsibility for particular aspects of such~~

~~communities to the appropriate agencies, consistent with their legal authority, to assure consistent state supervision without duplication of inspection or regulatory review;~~

~~d.] to make such recommendations to the governor and the legislature as may be necessary to encourage or further regulate the development of continuing care retirement communities[;~~

~~e. to establish and charge equitable and reasonable annual charges for operators, not to exceed fifty dollars per approved living unit, to subsidize, in part, expenditures incurred in reviewing applications for certificates of authority and in inspecting, regulating, supervising and auditing continuing care retirement communities;~~

~~f. to review reports from the participating agencies regarding the operations and financial management of approved communities, including any reports regarding the financial condition of any community that may be in need of close supervision and any reports of deficiencies in the provision of health or social services to residents of any community;~~

~~g. to adopt rules and regulations and amendments thereto to effectuate the provisions of this article;~~

~~h. to revoke, suspend, limit, or annul a certificate of authority under conditions set forth in section forty six hundred fifteen of this article, including when such action is taken at the specific request of any participating council agency. When action has been taken by the commissioner pursuant to subdivision seven of section forty six hundred three of this article, the council shall meet as soon as reasonably possible to approve or disapprove the action of the commissioner and shall take such further action as may be appropriate;~~

~~i. to develop guidelines for applications for certificates of authority;~~

~~j. to make a final determination regarding an application for authorization to enter into priority reservation agreements where the commissioner has proposed to reject such application;~~

~~k. to require the reporting of such facts and information as the council may deem necessary to determine whether characteristics of residential health care demonstration facilities such as comprehensive systems of residential and support services for the elderly may be successfully incorporated into existing or approved continuing care retirement communities;~~

~~l. to review and approve or reject applications by continuing care retirement community operators to use entrance fees to assist the operator in financing the construction or purchase of a proposed continuing care retirement community in accordance with paragraph b of subdivision six of section forty six hundred ten of this article; and~~

~~m. to review and approve or reject any proposed financing by industrial development agencies of continuing care retirement communities pursuant to article eighteen-A of the general municipal law as authorized by section forty six hundred four a of this article.~~

~~3. The council shall establish guidelines under which the commissioner is authorized to approve or reject any proposed refinancing, if the council has already approved an application pursuant to paragraph a of subdivision two of this section].~~

§ 4. Section 4603 of the public health law, as amended by chapter 659 of the laws of 1997, subdivisions 10 and 11 as amended and subdivision 12 as added by chapter 401 of the laws of 2003, is amended to read as follows:

§ 4603. Commissioner; power and duties. The commissioner[~~, in consultation with the council,~~] shall have the following powers and duties:

1 1. a. to receive applications from potential operators of continuing
2 care retirement communities and to distribute such applications for
3 review to the participating agencies;

4 ~~[2-] b.~~ to collect and compile recommendations from the participating
5 agencies and to present consolidated materials~~[, including recommenda-~~
6 ~~tions, to the council for its review and action]~~;

7 ~~[3-] c.~~ to develop uniform forms for applications for certificates of
8 authority, to review the status of such applications, and to coordinate
9 the review of such applications in order to minimize duplication or
10 delay;

11 ~~[4-] d.~~ to provide information to entities wishing to establish
12 continuing care retirement communities and to persons interested in
13 becoming residents of such communities and to assist operators and resi-
14 dents of such communities, to the extent appropriate, with concerns
15 relating to the operation of such facilities;

16 ~~[5-] e.~~ to ~~[issue certificates of authority to those applicants~~
17 ~~approved by the council]~~ approve or reject applications to obtain a
18 certificate of authority for the establishment and operation of a
19 continuing care retirement community. In reviewing applications, the
20 commissioner shall consider the extent to which the applications reflect
21 various sponsorships, organizational structures, geographic dispersion
22 and the public benefit. In determining the public benefit of a community
23 requiring construction of a total nursing facility component greater
24 than or equal to ninety beds, the commissioner shall obtain and consider
25 the recommendation of the public health and health planning council with
26 regard to the effect of the construction of the community's nursing
27 facility beds upon existing facilities in the same geographic area;

28 ~~[6-] f.~~ to coordinate the ~~[interagency regulatory review of the appli-~~
29 ~~cations, development and operations of communities in order to minimize~~
30 ~~duplication or delay]~~ oversight of operating communities and to consol-
31 idate review and regulatory responsibility, including inspections of
32 continuing care retirement community facilities, to assure consistent
33 state supervision without duplication of inspection or regulatory
34 review;

35 ~~[7-] g.~~ if the immediate health, safety, or financial needs of a
36 community's residents are in jeopardy, to suspend or limit a certificate
37 of authority pursuant to subdivision two of section forty-six hundred
38 fifteen of this article. If the commissioner suspends a certificate of
39 authority, he or she shall ~~[immediately]~~ notify the council;

40 ~~[8-] h.~~ to ~~[make recommendations concerning and to promulgate rules~~
41 ~~and regulations and amendments thereto that have been adopted by the~~
42 ~~council to effectuate the provisions of this article]~~ adopt rules and
43 regulations and amendments thereto to effectuate the provisions of this
44 article;

45 ~~[9-] i.~~ to carry out any other responsibilities entrusted to the
46 commissioner pursuant to this chapter that may be necessary with regard
47 to the health care activities of continuing care retirement communities;

48 ~~[10-] j.~~ to make available to all prospective operators all pertinent
49 regulations regarding health and insurance necessary to comply with this
50 article;

51 ~~[11-] k.~~ to approve or reject applications for authorization, by
52 prospective continuing care retirement community applicants, entities
53 that have filed an application for a certificate of authority and opera-
54 tors, to enter into cancelable priority reservation agreements and to
55 collect refundable priority reservation fees from prospective resi-
56 dents~~;~~ ~~provided that in any case where the commissioner proposes to~~

~~reject such application, the council shall meet within a reasonable period of time not to exceed ninety days to make a final determination regarding such application]; [and~~

~~12.]~~ l. to approve or reject any proposed refinancing consistent with the guidelines established pursuant to subdivision three of section forty-six hundred two of this article[-];

m. to revoke, suspend, limit or annul a certificate of authority under conditions set forth in section forty-six hundred fifteen of this article, including when such action is taken at the specific request of any participating council agency;

n. to require the reporting of such facts and information to determine whether characteristics of residential health care demonstration facilities such as comprehensive systems of residential and support services for the elderly may be successfully incorporated into existing or approved continuing care retirement communities;

o. to review and approve or reject applications by continuing care retirement community operators to use entrance fees to assist the operator in financing the construction or purchase of a proposed continuing care retirement community in accordance with paragraph b of subdivision six of section forty-six hundred ten of this article; and

p. to review and approve or reject any proposed financing by industrial development agencies of continuing care retirement communities pursuant to article eighteen-A of the general municipal law as authorized by section forty-six hundred four-a of this article.

2. Notwithstanding any provision of law to the contrary, this subdivision shall apply to any application to obtain a certificate of authority for the establishment and operation of a continuing care retirement community or fee-for-service continuing care retirement community and any application for the certification or licensure of any component of a continuing care retirement community or fee-for-service continuing care retirement community.

a. For an application to obtain a certificate of authority for the establishment and operation of a continuing care retirement community submitted to the commissioner pursuant to this article and article forty-six-A of this chapter, within one hundred eighty calendar days of the department deeming the application complete, the commissioner shall make a decision to approve or disapprove the application. If the commissioner determines to disapprove the application, the basis of such disapproval shall be provided in writing; however, disapproval shall not be based on the incompleteness of the application. If the commissioner fails to take action to approve or disapprove the application within one hundred eighty days of the application being deemed complete, the application shall be deemed approved.

b. The commissioner, in consultation with the public health and health planning council, shall develop a streamlined application review and approval process to be available for use on or before January first, two thousand eighteen in relation to the approval of components of a continuing care retirement community, including, but not limited to, a residential health care facility, adult care facility and assisted living facility; provided, however, that no such streamlined application review and approval process shall limit or restrict the authority of the public health and planning council to issue final approval or disapproval for the establishment, construction or addition of residential health care facility beds.

c. For an application that requires approval by the public health and health planning council, the application shall be placed on the next

1 council agenda following the commissioner deeming the application
2 complete.

3 d. Where the commissioner requires the applicant to submit information
4 to satisfy a contingency imposed on the approval of an application, the
5 commissioner shall have thirty calendar days to review and approve or
6 disapprove the submitted information. If the commissioner determines
7 that the information is incomplete, the department shall notify the
8 applicant in writing and provide the applicant with ten calendar days to
9 correct the deficiency or provide additional information. If the commis-
10 sioner determines that the submitted information does not satisfy the
11 contingency, the basis for such disapproval shall be provided in writ-
12 ing; however, disapproval shall not be based on the incompleteness of
13 the application. Within fifteen calendar days of complete satisfaction
14 of a contingency, the commissioner shall transmit the final approval
15 letter to the applicant.

16 § 5. Subdivision 1 of section 4604 of the public health law, as
17 amended by chapter 659 of the laws of 1997, is amended to read as
18 follows:

19 1. No person shall construct, expand, acquire, maintain, or operate a
20 continuing care retirement community, or enter into a contract as an
21 operator, or solicit the execution of any contract for continuing care
22 retirement community services to be provided within the state or adver-
23 tise itself or otherwise hold itself as a "continuing care retirement
24 community" or a "life plan community", without obtaining a certificate
25 of authority pursuant to this article; provided, however, nothing in
26 this subdivision shall prohibit a person, authorized pursuant to section
27 forty-six hundred twenty-one or forty-six hundred twenty-two of this
28 article, from entering into priority reservation agreements, soliciting,
29 collecting or receiving priority reservation fees, or constructing and
30 maintaining sales offices and model units with respect to a proposed
31 continuing care retirement community.

32 § 6. Subdivision 1 of section 4655 of the public health law, as
33 amended by chapter 545 of the laws of 2004, is amended to read as
34 follows:

35 1. No person shall construct, expand, acquire, maintain, or operate a
36 fee-for-service continuing care retirement community, or enter into a
37 contract as an operator, or solicit the execution of any contract for
38 fee-for-service continuing care retirement community services to be
39 provided within the state or advertise itself or otherwise hold itself
40 as a "fee-for-service continuing care retirement community" or a "life
41 plan community", without obtaining a certificate of authority pursuant
42 to this article; provided, however, nothing in this subdivision shall
43 prohibit a person, authorized pursuant to section forty-six hundred
44 seventy-four or forty-six hundred seventy-five of this article, from
45 entering into priority reservation agreements, soliciting, collecting or
46 receiving priority reservation fees, or constructing and maintaining
47 sales offices and model units with respect to a proposed fee-for-service
48 continuing care retirement community. Such facility shall obtain
49 approval to utilize residential health care facility beds authorized
50 under subdivision five of section forty-six hundred four of this chapter
51 and/or shall meet such other conditions for acquisition of the residen-
52 tial health care facility beds as the commissioner may determine.

53 § 7. Subdivision 3 of section 4604 of the public health law, as
54 amended by chapter 7 of the laws of 2015, is amended to read as follows:

55 3. Nothing in this article shall be construed to enlarge, diminish or
56 modify: a social services district's otherwise valid recovery under

1 section three hundred sixty-nine of the social services law, nor medical
2 assistance eligibility under title eleven of article five of the social
3 services law nor applicable provisions of the estates, powers and trusts
4 law. Except as otherwise provided in this article, the activities of
5 continuing care retirement communities shall be subject to any other law
6 governing such activities including but not limited to article twenty-
7 eight of this chapter and article seven of the social services law and
8 regulations promulgated thereunder; provided, however, that the
9 provisions of paragraphs (d) and (e) of subdivision four of section
10 twenty-eight hundred one-a and section twenty-eight hundred two of this
11 chapter shall not apply, and provided that the provisions of paragraph
12 (a) of subdivision one and the provisions of subdivision two of section
13 four hundred sixty-one-b of the social services law with respect to
14 public need and the provisions of subdivision one of section four
15 hundred sixty-one-c of the social services law shall not apply to resi-
16 dents who have been admitted in accordance with a contract provided
17 that, upon admission to the adult care facility, such residents shall be
18 given a notice which shall include, at a minimum, information regarding
19 facility services, resident responsibilities, supplemental services,
20 resident rights and protections and circumstances that warrant transfer,
21 subject to the provisions of subdivision twenty-one of section forty-six
22 hundred eight of this article. The number of residential health care
23 facility beds available pursuant to subdivision five of this section,
24 without proof of public need therefor, shall be reduced by the number of
25 residential health care demonstration facility beds that are approved
26 pursuant to this article.

27 § 8. Subdivision 3 of section 4655 of the public health law, as added
28 by chapter 519 of the laws of 2004, is amended to read as follows:

29 3. Nothing in this article shall be construed to enlarge, diminish or
30 modify: a social services district's otherwise valid recovery under
31 section three hundred sixty-nine of the social services law, nor medical
32 assistance eligibility under title eleven of article five of the social
33 services law, nor applicable provisions of the estates, powers and
34 trusts law. Except as otherwise provided in this article, the activities
35 of fee-for-service continuing care retirement communities shall be
36 subject to any other law governing such activities including but not
37 limited to article twenty-eight of this chapter and article seven of the
38 social services law and regulations promulgated thereunder; provided,
39 however, that the provisions of paragraphs (d) and (e) of subdivision
40 four of section twenty-eight hundred one-a and section twenty-eight
41 hundred two of this chapter shall not apply, and provided that the
42 provisions of paragraph (a) of subdivision one and the provisions of
43 subdivision two of section four hundred sixty-one-b of the social
44 services law with respect to public need and the provisions of subdivi-
45 sion one of section four hundred sixty-one-c of the social services law
46 shall not apply to residents who have been admitted in accordance with a
47 fee-for-service continuing care contract provided that, upon admission
48 to the adult care facility, such residents shall be given a notice which
49 shall include, at a minimum, information regarding facility services,
50 resident responsibilities, supplemental services, resident rights and
51 protections and circumstances that warrant transfer, subject to the
52 provisions of subdivision seventeen of section forty-six hundred fifty-
53 nine of this article. The number of residential health care facility
54 beds available pursuant to subdivision four of this section, without
55 proof of public need therefor, shall be reduced by the number of resi-

dential health care demonstration facility beds that are approved pursuant to this article.

§ 9. Subdivision 4 of section 4604 of the public health law, as amended by chapter 659 of the laws of 1997, subparagraphs (i), (ii) and (iii) of paragraph a as further amended by section 104 of part A of chapter 62 of the laws of 2011, paragraphs b and d as amended by chapter 549 of the laws of 2014, paragraph c as amended by chapter 7 of the laws of 2015, is amended to read as follows:

4. No certificate of authority shall be issued unless an application meeting the requirements of this section and all other requirements established by law has been approved by the commissioner:

a. ~~[(i)] the [superintendent of financial services as to the actuarial principles involved, the financial feasibility of the facility, the form and content of the proposed contracts to be entered into with residents and insurance contracts between an operator and an insurer requiring the insurer to assume, wholly or in part, the cost of medical or health related services to be provided to a resident]~~ actuarial principles involved, the financial feasibility of the facility and the form and content of the proposed contracts to be entered into with residents, provided that the review may be conducted by the commissioner or his or her designee, including any necessary independent actuarial review;

~~[(ii) the superintendent of financial services as to]~~ b. the rates and rating methodology, if any, to be used by the operator to determine any entrance fee, monthly care fee and/or any separate charges for the housing component of the continuing care contract including but not limited to a cooperative or condominium fee charged to the resident as proposed in said operator's application for certificate of authority. Subsequent increases in any entrance or monthly care fee in excess of fees calculated pursuant to the approved rating methodology shall require approval of the ~~[superintendent]~~ commissioner. The term "rating methodology" as used herein shall incorporate a combination of variables including but not limited to a pricing structure for comparable services, projected operating and health care costs and the applicable inflationary impact thereon, projected income and occupancy rates and the refundability component of the continuing care retirement contract~~[-~~

~~[(iii) the superintendent of financial services as to];~~

c. any monthly care fee charged to a resident which may be increased or decreased subject to approval by the ~~[superintendent of financial services]~~ commissioner, provided, that monthly care fees may be increased or decreased without specific approval as long as such increase or decrease does not exceed a relevant cost index or indices which reflect all components of continuing care including the costs associated with provision of health care as determined and promulgated at least annually by the ~~[superintendent]~~ commissioner or his or her designee, including any necessary independent actuarial review, and provided further that the ~~[superintendent]~~ commissioner is notified of any such increase or decrease prior to its taking effect~~[-~~

~~[(iv) An]~~ d. the requirement that an individual resident's monthly care fee shall not be modified because of the increased need for services of that resident;

~~[b. the commissioner as to those]~~ e. aspects of the application relating to adult care facility beds, if any;

~~[c.]~~ f. following review by the public health and health planning council as to the establishment of a skilled nursing facility by the applicant and as to such other facilities and services as may require the public health and health planning council's approval of the applica-

tion; provided, however, that the recommendations of the health systems agency having geographical jurisdiction of the area where the continuing care retirement community is located shall not be required with respect to the establishment of an on-site or affiliated residential health care facility to serve residents as part of the continuing care retirement community, for up to the total number of residential health care facility beds provided for in subdivision five of this section in communities statewide;

~~[d. the commissioner under section twenty-eight hundred two of this chapter;]~~ g. provided, however, that, the recommendations of the public health and health planning council and the health systems agency having geographical jurisdiction of the area where the continuing care retirement community is located shall not be required with respect to the construction of an on-site or affiliated residential health care facility to serve residents as part of the continuing care retirement community, for up to the total number of residential health care facility beds provided for in subdivision five of this section in communities statewide; and

~~[e. the]~~ h. upon consultation with the attorney general, as to those aspects of the application relating to a cooperative, condominium or other equity arrangement for the independent living unit, if any.

§ 10. The opening paragraph of subdivision 6 of section 4604 of the public health law, as amended by chapter 659 of the laws of 1997, is amended to read as follows:

If the ~~[approvals]~~ applicant has satisfied the criteria required by subdivision four of this section ~~[have been obtained]~~, the ~~[council]~~ commissioner shall ~~[, by majority vote,]~~ either approve or reject the application ~~[within sixty days of the date on which the last such approval has been obtained]~~. In order to approve the application, the ~~[council]~~ commissioner shall have determined that:

§ 11. Subdivisions 7 and 9 of section 4604 of the public health law, subdivision 7 as amended by chapter 659 of the laws of 1997 and subdivision 9 as added by chapter 689 of the laws of 1989, are amended to read as follows:

7. Any change in the legal entity operating the continuing care retirement community, or in a controlling person of the community shall require approval in the same manner as an original application; provided, however, that the ~~[council]~~ commissioner may waive any requirement to provide information that is not relevant to such change and provided, further, that the continued public need for the community shall be presumed.

9. ~~[If the council approves the application, the]~~ The commissioner shall issue the certificate of authority to the applicant upon approval of the application.

§ 12. Section 4604-a of the public health law, as amended by chapter 659 of the laws of 1997, paragraph g of subdivision 2 as amended by chapter 549 of the laws of 2014, is amended to read as follows:

§ 4604-a. ~~[Council]~~ Commissioner approval required for industrial development agency financing in connection with continuing care retirement communities. 1. No person seeking financing in connection with a continuing care retirement community through an industrial development agency shall undertake such financing without the prior approval of the ~~[council]~~ commissioner. Upon approving a proposed financing pursuant to this section, the ~~[council]~~ commissioner shall issue a certificate of authorization to the applicant.

1 2. Prior to approving such financing, the [~~council~~] commissioner shall
2 find that:

3 a. The operator has (i) executed contracts for at least seventy
4 percent of all living units and has on deposit at least ten percent of
5 the entrance fees or purchase price for such units; or (ii) executed
6 contracts for at least sixty percent of all living units and has on
7 deposit at least twenty-five percent of the entrance fees or purchase
8 price for such units.

9 b. The operator has demonstrated capability to comply fully with the
10 requirements for a certificate of authority and has obtained a contin-
11 gent certificate of authority pursuant to section forty-six hundred four
12 of this article and the operator has agreed to meet the requirements of
13 article eighteen-A of the general municipal law.

14 c. The applicant is a not-for-profit corporation as defined in section
15 one hundred two of the not-for-profit corporation law that is (i) eligi-
16 ble for tax-exempt financing under this section and (ii) is exempt from
17 taxation pursuant to section 501(c)(3) of the federal internal revenue
18 code, and either has (i) an equity position in the community equivalent
19 to no less than fifteen percent of the amount to be financed in the
20 aggregate; or (ii) covenants (A) to meet a ratio of cash and investments
21 to outstanding debt (reserve ratio) of no less than twenty-five percent
22 commencing at the end of the first quarter after twenty-four months from
23 the receipt of a certificate of occupancy for the facility, and (B) to
24 maintain that reserve ratio, as tested quarterly based upon the facili-
25 ty's interim financial statements and annually based upon audited finan-
26 cial statements, until debt reduction equal to twenty-five percent of
27 total indebtedness is accomplished; and (c) to reduce total debt by
28 twenty-five percent of the total indebtedness at the time the certif-
29 icate of occupancy is received by no later than five years after the
30 receipt of the certificate of occupancy.

31 d. The operator has submitted in connection with the proposed financ-
32 ing a financial feasibility study, including a financial forecast and
33 market study prepared by an independent firm nationally recognized for
34 continuing care retirement community feasibility studies, demonstrating
35 to the satisfaction of the [~~council~~] commissioner the financial sound-
36 ness of the financing. In addition, the operator has submitted an analy-
37 sis of economic costs and benefits, including job creation and
38 retention, the estimated value of tax exemptions provided, the project's
39 impact on local businesses and the availability and comparative cost of
40 alternative financing sources. Such analysis shall be prepared by an
41 independent entity.

42 e. The operator will establish and maintain a fully funded debt
43 service reserve equal to the sum of maximum annual debt service (inter-
44 est plus annual scheduled principal payments, not including balloon
45 maturities, if any) on bonds authorized thereby having a maturity of ten
46 years or less, plus the maximum annual debt service on bonds authorized
47 thereby having a maturity of greater than ten years, provided, however,
48 that in the case of tax-exempt bond issues, such debt service reserve
49 shall not exceed the maximum amount permitted by federal tax law.

50 f. The operator will provide for such remedies or limitations of reme-
51 dies of bondholders as may be required by or consistent with the
52 provisions of this article and any regulations in existence at the time
53 of the issuance promulgated thereunder.

54 g. Unless all residents or continuing care at home contract holders
55 have life care contracts, the operator has adequately made the assur-
56 ances required by subdivision two of section forty-six hundred twenty-

1 four of this article and has agreed to fund the liability in the event
2 that such resident's or contract holder's assets are insufficient to pay
3 for nursing facility services for a one year period.

4 3. In addition, an operator which is subject to the provisions of this
5 section shall:

6 a. provide the [~~council or its designee~~] commissioner with notice of
7 any monetary default or covenant default in connection with such financ-
8 ing and shall further notify the [~~council or its designee~~] commissioner
9 of any withdrawal from the debt service reserve fund established in
10 connection with such financing;

11 b. respond in writing to the operational recommendations of the [~~coun-
12 cil or its designee~~] commissioner with respect to protecting the inter-
13 ests of continuing care retirement community residents in the event of
14 any monetary default or covenant default provided for in connection with
15 such financing;

16 c. provide adequate security for the repayment of the bonds issued,
17 including the granting of liens on real and personal property and the
18 pledge of project revenues; the maintenance of minimum debt service
19 coverage and other financial ratios as shall be required in regulations
20 in existence at the time of issuance by the [~~council~~] commissioner; and
21 restrictions on other debt and expenditures; and

22 d. undertake to maintain the financial feasibility of the facility,
23 including the retention of an independent consultant to recommend and
24 help implement remedial action.

25 4. The [~~council~~] commissioner may request, and shall receive, the
26 technical assistance of any state agency or state public authority in
27 performing its functions under this article.

28 § 13. Paragraphs a and b of subdivision 2 of section 4605 of the
29 public health law, paragraph a as amended by chapter 659 of the laws of
30 1997 and paragraph b as amended by chapter 401 of the laws of 2003, are
31 amended to read as follows:

32 a. The commissioner[~~, in consultation with the council,~~] may authorize
33 an operator of a community with an on-site or affiliated residential
34 health care facility to provide[~~, for a limited period,~~] residential
35 health care facility services to persons, who are not residents of the
36 community, provided, however, that the operator shall not discriminate
37 in the admission, retention or care of any such person because such
38 person is or will be eligible for, or receives or will receive, medical
39 assistance benefits pursuant to title eleven of article five of the
40 social services law. For communities in existence prior to January
41 first, two thousand seventeen with an on-site or affiliated residential
42 health care facility, each community is authorized to continue to
43 provide residential health care facility services to persons who are not
44 residents of the community at a percentage deemed permissible by the
45 commissioner. For communities approved following January first, two
46 thousand seventeen with an on-site or affiliated residential health care
47 facility, each community shall be permitted to provide residential
48 health care facility services to persons who are not residents of the
49 community for a period of seven years, provided, however, that the oper-
50 ator may seek an extension of this authorization at the end of the
51 seven-year period upon written application to the commissioner.

52 b. [~~The~~] Upon written notice to the commissioner, [~~in consultation~~
53 with the council, may authorize] an operator of a community with an
54 on-site or affiliated adult care facility [~~to~~] may provide[~~, for a~~
55 ~~limited period,~~] adult care facility services to persons, who are not
56 residents of the community, provided, however, that the operator shall

1 not discriminate in the admission, retention or care of any such person
2 because such person is or will be eligible for, or receives or will
3 receive, medical assistance benefits pursuant to title eleven of article
4 five of the social services law or supplemental security income benefits
5 pursuant to title sixteen of the federal social security act and any
6 additional state payments made under title six of article five of the
7 social services law. For persons who are not residents of the community
8 at the time of admission to an adult care facility, the transfer of such
9 resident to an on-site or affiliated residential health care facility
10 due to medical necessity shall not constitute residential health care
11 facility services to persons who are not residents of the community.

12 § 14. Paragraphs a and b of subdivision 2 of section 4656 of the
13 public health law, as added by chapter 519 of the laws of 2004, are
14 amended to read as follows:

15 a. The commissioner~~[, in consultation with the council,]~~ may authorize
16 an operator of a community with an on-site or affiliated residential
17 health care facility to provide~~[, for a limited period,]~~ residential
18 health care facility services to persons, who are not residents of the
19 community, provided, however, that the operator shall not discriminate
20 in the admission, retention or care of any such person because such
21 person is or will be eligible for, or receives or will receive, medical
22 assistance benefits pursuant to title eleven of article five of the
23 social services law. For communities in existence prior to January
24 first, two thousand seventeen with an on-site or affiliated residential
25 health care facility, each community is authorized to continue to
26 provide residential health care facility services to persons who are not
27 residents of the community at a percentage deemed permissible by the
28 commissioner. For communities approved following January first, two
29 thousand seventeen with an on-site or affiliated residential health care
30 facility, each community shall be permitted to provide residential
31 health care facility services to persons who are not residents of the
32 community for a period of seven years, provided, however, that the oper-
33 ator may seek an extension of this authorization at the end of the
34 seven-year period upon written application to the commissioner. For
35 persons who are not residents of the community at the time of admission
36 to an adult care facility, the transfer of such resident to an on-site
37 or affiliated residential health care facility due to medical necessity
38 shall not constitute residential health care facility services to
39 persons who are not residents of the community.

40 b. ~~[The]~~ Upon written notice to the commissioner, ~~[in consultation~~
41 ~~with the council, may authorize]~~ an operator of a community with an
42 on-site or affiliated adult care facility ~~[to]~~ may provide~~[, for a~~
43 ~~limited period,]~~ adult care facility services to persons, who are not
44 residents of the community, provided, however, that the operator shall
45 not discriminate in the admission, retention or care of any such person
46 because such person is or will be eligible for, or receives or will
47 receive, medical assistance benefits pursuant to title eleven of article
48 five of the social services law or supplemental security income benefits
49 pursuant to title sixteen of the federal social security act and any
50 additional state payments made under title six of article five of the
51 social services law. For persons who are not residents of the community
52 at the time of admission to an adult care facility, the transfer of such
53 resident to an on-site or affiliated residential health care facility
54 due to medical necessity shall not constitute residential health care
55 facility services to persons who are not residents of the community.

§ 15. Section 4605-a of the public health law, as added by chapter 7 of the laws of 2015, is amended to read as follows:

§ 4605-a. Certificate of authority; authority to offer continuing care at home contracts. A continuing care retirement community may offer continuing care at home contracts upon approval by the ~~[council]~~ commissioner to amend the continuing care retirement community's certificate of authority. In order to qualify for an amendment to its certificate of authority, the continuing care retirement community shall submit to the commissioner the following:

1. a business plan to the commissioner ~~[and superintendent]~~ that includes the following:

(a) a description of the continuing care at home services that will be provided, the market that will be served by the continuing care at home contracts, and the fees to be charged to prospective continuing care at home contract holders;

(b) a copy of the proposed continuing care at home contract; and

(c) an actuarial study prepared by an independent actuary in accordance with standards adopted by the American Academy of Actuaries demonstrating the impact that the continuing care at home contracts will have on the overall operations of the continuing care retirement community and further demonstrating that the addition of continuing care at home contracts will not jeopardize the financial solvency of the continuing care retirement community.

2. a market feasibility study demonstrating to the commissioner ~~[and superintendent]~~ sufficient consumer interest in continuing care at home contracts and further demonstrating that the addition of continuing care at home contracts will not have an adverse impact on the provision of services to continuing care retirement contract holders.

3. materials that meet all requirements established by the ~~[New York state]~~ department ~~[of financial services]~~.

4. ~~[A]~~ a copy of the notification sent to continuing care retirement contract holders describing the anticipated impact of the addition of continuing care at home contracts on continuing care retirement community resources and proof that such notification has been distributed to all continuing care retirement contract holders.

§ 16. Section 4605-b of the public health law, as added by chapter 7 of the laws of 2015, is amended to read as follows:

§ 4605-b. Certificate of authority; limitation on continuing care at home contracts. The number of continuing care at home contracts approved on a certificate of authority shall be limited to:

1. The number of approved living units on the continuing care retirement community's premises that are intended for ILU residents, except that the ~~[council]~~ commissioner may approve additional contracts upon a submission ~~[to the commissioner]~~ by an operator consistent with the provisions set forth in section forty-six hundred five-a of this article;

2. The demonstrated number of continuing care at home contract holders that can be supported in the existing or approved future capacity of the adult care facility and skilled nursing facility consistent with the provisions set forth in section forty-six hundred five-a of this article; and

3. Conditions set forth by the ~~[New York state]~~ department ~~[of financial services]~~, based upon the ~~[superintendent]~~ commissioner's assessment of the following:

(a) the overall financial impact on the community; and

1 (b) the submitted materials set forth in section forty-six hundred
2 five-a of this article.

3 § 17. Section 4607 of the public health law, as added by chapter 689
4 of the laws of 1989, paragraph d of subdivision 2 as amended by chapter
5 659 of the laws of 1997, is amended to read as follows:

6 § 4607. Annual statement. 1. Within four months of close of the oper-
7 ator's fiscal year, unless an extension of time to file has been grant-
8 ed, the operator shall file an annual statement with the commissioner
9 [~~and superintendent~~] showing the condition as of the last day of the
10 preceding calendar or fiscal year. If the commissioner [~~and superinten-~~
11 ~~dent-do~~] does not receive the annual statement within four months of the
12 end of the operator's fiscal year or have not granted an extension of
13 time to file, the [~~council~~] commissioner may charge a late fee.

14 2. The annual statement shall be in such form as the [~~council~~] commis-
15 sioner prescribes and shall contain at least the following:

16 a. Any change in status with respect to the information required to be
17 submitted pursuant to section forty-six hundred four of this article;

18 b. Financial statements audited by an independent certified public
19 accountant, which shall contain, for two or more periods if the communi-
20 ty has been in existence that long, the following:

21 (i) an accountant's opinion and, in accordance with generally accepted
22 accounting principles:

23 (A) a balance sheet,

24 (B) a statement of income and expenses,

25 (C) a statement of equity or fund balances,

26 (D) a statement of changes in financial position,

27 (ii) notes to the financial statements considered customary or neces-
28 sary to ensure full disclosure of the financial statements, financial
29 condition, and operation;

30 c. A detailed listing of the assets maintained for the reserves;

31 d. A copy of the most recent actuarial review of the community,
32 including such information as may be required by the [~~superintendent~~]
33 commissioner including an opinion of a qualified consulting actuary, as
34 to the current and projected soundness of the community, provided howev-
35 er that a new actuarial review must be submitted triennially; and

36 e. Such other reasonable financial and other information as the [~~coun-~~
37 ~~cil~~] commissioner may require with respect to the operator or the commu-
38 nity, or its directors, controlling persons, trustees, members, branch-
39 es, subsidiaries or affiliates to determine the financial status of the
40 community and the management capabilities of the operator.

41 3. Sixty days before commencement of each calendar or fiscal year or
42 official opening date, whichever is applicable, each operator shall file
43 with the commissioner [~~and superintendent~~] a computation of the annual
44 long-term debt service and a projected annual revenue and expense summa-
45 ry for the next ten years.

46 § 18. Section 4658 of the public health law, as added by chapter 519
47 of the laws of 2004, is amended to read as follows:

48 § 4658. Annual statement. 1. Within four months of close of an opera-
49 tor's fiscal year, unless an extension of time to file has been granted,
50 the operator shall file an annual statement with the commissioner show-
51 ing the condition as of the last day of the preceding calendar or fiscal
52 year. If the commissioner does not receive the annual statement within
53 four months of the end of the operator's fiscal year or has not granted
54 an extension of time to file, the council may charge a late fee.

55 2. The annual statement shall be in such form as the [~~council~~] commis-
56 sioner prescribes and shall contain at least the following:

1 a. Any change in status with respect to the information required to be
2 submitted pursuant to section forty-six hundred fifty-seven of this
3 article;

4 b. Financial statements audited by an independent certified public
5 accountant, which shall contain, for two or more periods if the communi-
6 ty has been in existence that long, the following:

7 (i) notes to the financial statements considered customary or neces-
8 sary to ensure full disclosure of the financial statements, financial
9 condition, and operation; and

10 (ii) an accountant's opinion and, in accordance with generally
11 accepted accounting principles: (A) a balance sheet, (B) a statement of
12 income and expenses, (C) a statement of equity or fund balances, and (D)
13 a statement of changes in financial position;

14 c. A detailed listing of the assets maintained for the reserves; and

15 d. Such other reasonable financial and other information as the [~~coun-~~
16 ~~cil~~] commissioner may require with respect to the operator or the commu-
17 nity, or its directors, controlling persons, trustees, members, branch-
18 es, subsidiaries or affiliates to determine the financial status of the
19 community and the management capabilities of the operator.

20 3. Sixty days before commencement of each calendar or fiscal year or
21 official opening date, whichever is applicable, each operator shall file
22 with the commissioner a computation of the annual long-term debt service
23 and a projected annual revenue and expense summary for the next ten
24 years.

25 § 19. Paragraphs a and c of subdivision 15 of section 4608 of the
26 public health law, as amended by chapter 7 of the laws of 2015, are
27 amended to read as follows:

28 a. the resident or contract holder, as applicable shall, if eligible,
29 enroll in medicare parts a and b or the equivalent and shall continue to
30 maintain that coverage, together with medicare supplement coverage at
31 least equivalent in benefits to those established by the superintendent
32 as minimum benefits for medicare supplement policies; provided, however,
33 that such medicare supplement coverage shall cover any coinsurance
34 amounts due and payable for the twenty-first day through the hundredth
35 day of any medicare part a benefit period for post-hospital skilled
36 nursing facility care;

37 c. if the community cannot purchase medicare coverage and medicare
38 supplement coverage or the equivalent, the community shall have the
39 authority to require an adjustment in monthly fees, subject to the
40 approval of the [~~superintendent~~] commissioner, to fund the additional
41 risk to the facility; and

42 § 20. Subdivision 16 of section 4608 of the public health law, as
43 amended by chapter 7 of the laws of 2015, is amended to read as follows:

44 16. A statement that any amendment to the contract and any change in
45 fees or charges, other than those within the guidelines of an approved
46 rating system, must be approved by the [~~superintendent of financial~~
47 ~~services~~] commissioner;

48 § 21. Section 4608 of the public health law is amended by adding a new
49 subdivision 21 to read as follows:

50 21. A statement that, except as otherwise required by law, rule or
51 regulation, a continuing care retirement contract or continuing care at
52 home contract shall take precedence over any conflicting requirements
53 for separate admissions agreements for covered levels of care including,
54 but not limited to, a nursing home admissions agreement, an adult care
55 facility admission agreement or an assisted living residency agreement.

§ 22. Section 4659 of the public health law, as added by chapter 519 of the laws of 2004, is amended by adding a new subdivision 17 to read as follows:

17. A statement that a fee-for-service continuing care contract shall take precedence over any conflicting requirements for separate admissions agreements for covered levels of care, including, but not limited to, a nursing home admissions agreement, an adult care facility admission agreement, or an assisted living residency agreement.

§ 23. Subdivision 4 of section 4609 of the public health law, as added by chapter 689 of the laws of 1989, is amended and a new subdivision 5 is added to read as follows:

4. Any refund made pursuant to this section must be paid no later than thirty days after the formerly occupied unit has been resold, but in no event later than ~~[one year]~~ two years after the formerly occupied unit has been vacated.

5. Nothing in this section shall preclude a resident from making an immediate irrevocable gift or a bequest to the community of all or part of the entrance fee which would otherwise be refunded under this section.

§ 24. Subdivision 4 of section 4660 of the public health law, as added by chapter 519 of the laws of 2004, is amended and a new subdivision 5 is added to read as follows:

4. Any refund made pursuant to this section shall be paid no later than thirty days after the formerly occupied unit has been resold, but in no event later than ~~[one year]~~ two years after the formerly occupied unit has been vacated; provided, further, that a resident transfer to another level of care in the community shall not be considered a withdrawal of such resident for purposes of requiring a refund under this section.

5. Nothing in this section shall preclude a resident from making an immediate irrevocable gift or a bequest to the community of all or part of the entrance fee which would otherwise be refunded under this section.

§ 25. Subparagraph (v) of paragraph b of subdivision 6 of section 4610 of the public health law, as amended by chapter 659 of the laws of 1997, is amended to read as follows:

(v) the total amount of escrowed entrance fees or deposits that may be approved for release under this paragraph shall not exceed ~~[fifteen]~~ eighty-five percent of ~~[the total costs of acquiring, constructing and equipping the proposed community]~~ entrance fees or deposits collected;

§ 26. Paragraph e of subdivision 1-a of section 4663 of the public health law, as added by chapter 545 of the laws of 2004, is amended to read as follows:

e. the total amount of escrowed entrance fees or deposits that may be approved for release under this subdivision shall not exceed ~~[fifteen]~~ eighty-five percent of ~~[the total costs of acquiring, constructing and equipping the proposed community]~~ entrance fees or deposits collected;

§ 27. Subdivisions 1 and 2 of section 4614 of the public health law, as amended by chapter 7 of the laws of 2015, are amended to read as follows:

1. The commissioner, or designee~~[-; and the superintendent, or designee-]~~ may at any time, and shall at least once every three years, visit each community and examine the business of any applicant for a certificate of authority and any operator engaged in the execution of continuing care retirement contracts or continuing care at home contracts or engaged in the performance of obligations under such contracts. Routine

1 examinations may be conducted by having documents designated by and
2 submitted to such [~~commissioners or superintendent~~] ~~commissioner~~, which
3 shall include financial documents and records conforming to commonly
4 accepted accounting principles and practices. The final written report
5 of each such examination conducted by such [~~commissioners or superinten-~~
6 ~~dent~~] ~~commissioner~~ shall be filed with the commissioner and, when so
7 filed, shall constitute a public record. A copy of each report shall be
8 provided to members of the continuing care retirement community council.
9 Any operator being examined shall, upon request, give reasonable and
10 timely access to all of its records. The representative or examiner
11 designated by the [~~commissioners or superintendent, respectively,~~
12 ~~commissioner~~] may, at any time, examine the records and affairs and
13 inspect the community's facilities, whether in connection with a formal
14 examination or not.

15 2. Any duly authorized officer, employee, or agent of the [~~health~~]
16 department[, ~~or department of financial services~~] may, upon presentation
17 of proper identification, have access to, and inspect, any records main-
18 tained by the community relevant to the [~~respective~~] agency's regulatory
19 authority, with or without advance notice, to secure compliance with, or
20 to prevent a violation of, any provision of this article.

21 § 28. Section 4615 of the public health law, as added by chapter 689
22 of the laws of 1989, paragraph j of subdivision 1 as further amended by
23 section 104 of part A of chapter 62 of the laws of 2011, paragraph k of
24 subdivision 1 as amended by chapter 7 of the laws of 2015 and subdivi-
25 sion 3 as amended by chapter 659 of the laws of 1997, is amended to read
26 as follows:

27 § 4615. Revocation, suspension or annulment of certificate of authori-
28 ty. 1. The [~~council~~] ~~commissioner~~ may revoke, suspend, limit or annul
29 the certificate of authority of an operator upon proof that:

30 a. The operator failed to continue to meet the requirements for the
31 authority originally granted;

32 b. The operator lacked one or more of the qualifications for the
33 certificate of authority as specified by this article;

34 c. The operator made a material misstatement, misrepresentation, or
35 committed fraud in obtaining the certificate of authority, or in
36 attempting to obtain the same;

37 d. The operator lacked fitness or was untrustworthy;

38 e. The operator engaged in fraudulent or dishonest practices of
39 management in the conduct of business under the certificate of authori-
40 ty;

41 f. The operator converted or withheld funds;

42 g. The operator failed to comply with, or violated, any proper order,
43 rule or regulation of the council or violated any provision of this
44 article;

45 h. The unsound business practices of the operator renders its further
46 transactions in this state hazardous or injurious to the public;

47 i. The operator has refused to be examined or to produce its accounts,
48 records, and files for examination, or its officers, employees, or
49 controlling persons have refused to give information with respect to the
50 affairs of the community or to perform any other legal obligation as to
51 such examination;

52 j. The [~~superintendent of financial services~~] ~~commissioner~~ has made a
53 determination that the operator is insolvent within the meaning of
54 section one thousand three hundred nine of the insurance law; or

1 k. The commissioner has found violations of applicable statutes, rules
2 or regulations which threaten to affect directly the health, safety, or
3 welfare of a resident.

4 1-a. The commissioner shall not revoke, suspend, limit or annul the
5 certificate of authority of an operator pursuant to subdivision one of
6 this section without first consulting with, and receiving a recommenda-
7 tion from, the public health and health planning council.

8 2. No certificate of authority shall be revoked, suspended, limited or
9 annulled without a hearing, except that a certificate of authority may
10 be temporarily suspended or limited prior to a hearing for a period not
11 in excess of sixty days upon written notice to the operator following a
12 finding by the commissioner that the public health or safety is in immi-
13 nent danger or there exists any condition or practice or a continuing
14 pattern of conditions or practices that pose an imminent danger to the
15 health or safety of any resident. Any delay in the hearing process occa-
16 sioned by the operator shall toll the running of said suspension or
17 limitation and shall not abridge the full time provided in this subdivi-
18 sion.

19 3. Any state agency which seeks to revoke, suspend, limit or annul the
20 certificate of authority or any other license or certificate required to
21 be obtained by an operator of a continuing care retirement community
22 pursuant to law, shall request the [~~council~~] commissioner to commence a
23 hearing pursuant to this section.

24 4. The [~~council~~] commissioner shall fix a time and place for the hear-
25 ing. The commissioner shall cause to be served in person or mailed by
26 registered or certified mail to the operator at least ten days before
27 the date fixed for the hearing a copy of the charges, together with the
28 notice of the time and place of the hearing. The operator shall file
29 with the commissioner not less than three days prior to the hearing a
30 written answer to the charges. The agency which initiated the proceeding
31 shall be responsible for providing evidence in support of the charges to
32 the commissioner in order to prepare a statement of charges and shall
33 provide evidence in support of the charges at the hearing.

34 5. All orders hereunder shall be subject to review as provided in
35 article seventy-eight of the civil practice law and rules. Application
36 for such review must be made within sixty days after service in person
37 or by registered or certified mail of a copy of the order upon the oper-
38 ator.

39 § 29. Section 4616 of the public health law, as added by chapter 689
40 of the laws of 1989, the opening paragraph as amended by chapter 659 of
41 the laws of 1997, is amended to read as follows:

42 § 4616. Appointment of a caretaker. Upon a determination by the [~~coun-~~
43 ~~cil~~] commissioner that there exists operational deficiencies in a
44 continuing care retirement community that show:

45 1. a condition or conditions in substantial violation of the standards
46 for health, safety or patient care established under federal or state
47 law or regulations; or

48 2. [~~or~~] that there exists in the facility a pattern or practice of
49 habitual violation of the standards of health, safety or patient care
50 established under federal or state law or regulations, the [~~council~~]
51 commissioner shall take the actions prescribed by section forty-six
52 hundred fifteen of this article, and, where the [~~council~~] commissioner
53 deems it to be in the public interest, the [~~council may request that the~~
54 ~~commissioner, and upon request of the council the~~] commissioner shall[,]
55 petition a court of competent jurisdiction to appoint a caretaker as
56 defined in section twenty-eight hundred one of this chapter. The peti-

tion, the proceedings, and the procedures for appointment of a caretaker shall be governed by the provisions of section forty-six hundred seventeen of this article, and the powers, duties and rights of a caretaker appointed pursuant to such section shall be the same as those authorized by subdivision four of such section.

§ 30. Subdivisions 1, 2 and 8 of section 4617 of the public health law, subdivision 1 as amended by chapter 659 of the laws of 1997, and subdivisions 2 and 8 as added by chapter 689 of the laws of 1989, are amended to read as follows:

1. The ~~[council]~~ commissioner may, ~~[if it determines]~~ upon a determination that serious operational deficiencies exist or serious financial problems exist and such action is desirable, enter into an agreement with the operator or owners of a continuing care retirement community with respect to the appointment of a receiver to take charge of the community under conditions as found acceptable by both parties. Receivership commenced in accordance with the provisions of this subdivision shall terminate at such time as may be provided in the receivership agreement, or at such time as either party notifies the other in writing that it wishes to terminate such receivership.

2. ~~[Upon request of the council, the]~~ The commissioner shall, at the time of revocation, suspension or temporary suspension of a certificate of authority, apply to the supreme court where the community is situated for an order directing the owner of the land and/or structure on or in which the community is located, to show cause why a receiver should not be appointed to take charge of the community. In those cases where the certificate of authority has been revoked, suspended or temporarily suspended, the supreme court shall appoint a receiver that, where reasonably possible, is a legal entity that holds a valid certificate of authority. Such application shall contain proof by affidavit that the facility has had its certificate of authority revoked, suspended, or temporarily suspended. Such order to show cause shall be returnable not less than five days after service is completed and shall provide for personal service of a copy thereof and the papers on which it is based, on the owner or owners of the land and/or structures on or in which the community is located. If any such owner and manager cannot with due diligence be served personally within the county where the property is located and within the time fixed in such order, then service may be made on such person by posting a copy thereof in a conspicuous place within the community in question, and by sending a copy thereof by registered mail, return receipt requested, to such owner at the last address registered by him with the department or in the absence of such registration to the address set forth in the last recorded deed with respect to the facility. Service shall be deemed complete on filing proof of service thereof in the office of the county clerk, or the clerk of the city of New York, as the case may be.

8. Any other provision of this article notwithstanding, the ~~[council]~~ commissioner may, if it deems appropriate, grant to any community operating or scheduled to operate under a receivership authorized by this section a certificate of authority, the duration of which shall be limited to the duration of the receivership.

§ 31. Section 4668 of the public health law, as added by chapter 519 of the laws of 2004, is amended to read as follows:

§ 4668. Revocation, suspension or annulment of certificate of authority. 1. The ~~[council]~~ commissioner may revoke, suspend, limit or annul the certificate of authority of an operator upon proof that:

1 a. The operator failed to continue to meet the requirements for the
2 authority originally granted;

3 b. The operator lacked one or more of the qualifications for the
4 certificate of authority as specified by this article;

5 c. The operator made a material misstatement, misrepresentation, or
6 committed fraud in obtaining the certificate of authority, or in
7 attempting to obtain the same;

8 d. The operator lacked fitness or was untrustworthy;

9 e. The operator engaged in fraudulent or dishonest practices of
10 management in the conduct of business under the certificate of authori-
11 ty;

12 f. The operator converted or withheld funds;

13 g. The operator failed to comply with, or violated, any proper order,
14 rule or regulation of the council or violated any provision of this
15 article;

16 h. The unsound business practices of the operator renders its further
17 transactions in this state hazardous or injurious to the public;

18 i. The operator has refused to be examined or to produce its accounts,
19 records and files for examination, or its officers, employees or
20 controlling persons have refused to give information with respect to the
21 affairs of the community or to perform any other legal obligation as to
22 such examination; or

23 j. The commissioner has found violations of applicable statutes, rules
24 or regulations which threaten to affect directly the health, safety, or
25 welfare of a resident of a fee-for-service continuing care retirement
26 community.

27 1-a. The commissioner shall not revoke, suspend, limit or annul the
28 certificate of authority of an operator pursuant to subdivision one of
29 this section without first consulting with, and receiving a recommenda-
30 tion from, the public health and health planning council.

31 2. No certificate of authority shall be revoked, suspended, limited or
32 annulled without a hearing, except that a certificate of authority may
33 be temporarily suspended or limited prior to a hearing for a period not
34 in excess of sixty days upon written notice to the operator following a
35 finding by the commissioner that public health or safety is in imminent
36 danger or there exists any condition or practice or a continuing pattern
37 of conditions or practices that pose an imminent danger to the health or
38 safety of any resident. Any delay in the hearing process occasioned by
39 the operator shall toll the running of said suspension or limitation and
40 shall not abridge the full time provided in this subdivision.

41 3. Any state agency which seeks to revoke, suspend, limit or annul the
42 certificate of authority or any other license or certificate required to
43 be obtained by an operator of a community pursuant to law, shall request
44 the [~~council~~] commissioner to commence a hearing pursuant to this
45 section.

46 4. The [~~council~~] commissioner shall fix a time and place for the hear-
47 ing. The commissioner shall cause to be served in person or mailed by
48 registered or certified mail to the operator at least ten days before
49 the date fixed for the hearing a copy of the charges, together with the
50 notice of the time and place of the hearing. The operator shall file
51 with the commissioner not less than three days prior to the hearing a
52 written answer to the charges. The agency which initiated the proceeding
53 shall be responsible for providing evidence in support of the charges to
54 the commissioner in order to prepare a statement of charges and shall
55 provide evidence in support of the charges at the hearing.

1 5. All orders pursuant to this section shall be subject to review as
2 provided in article seventy-eight of the civil practice law and rules.
3 Application for such review shall be made within sixty days after
4 service in person or by registered or certified mail of a copy of the
5 order upon the operator.

6 § 32. Section 4669 of the public health law, as added by chapter 519
7 of the laws of 2004, is amended to read as follows:

8 § 4669. Appointment of a caretaker. Upon a determination by the
9 ~~[council]~~ commissioner that there exists operational deficiencies in a
10 fee-for-service continuing care retirement community that show:

11 1. there exists in the facility a pattern or practice of habitual
12 violation of the standards of health, safety or patient care established
13 under federal or state law or regulations, the ~~[council]~~ commissioner
14 shall take the actions prescribed by section forty-six hundred sixty-
15 eight of this article, and, where the ~~[council]~~ commissioner deems it to
16 be in the public interest, the ~~[council may request the commissioner,~~
17 ~~and upon request of the council the]~~ commissioner shall⁷ petition a
18 court of competent jurisdiction to appoint a caretaker as defined in
19 section twenty-eight hundred one of this chapter. The petition, the
20 proceedings, and the procedures for appointment of a caretaker shall be
21 governed by the provisions of section forty-six hundred seventy of this
22 article, and the power, duties and rights of a caretaker appointed
23 pursuant to such section shall be the same as those authorized by subdi-
24 vision four of such section; or

25 2. a condition or conditions in substantial violation of the standards
26 for health, safety or patient care established under federal or state
27 law or regulations.

28 § 33. Subdivisions 1, 2 and 8 of section 4670 of the public health
29 law, as added by chapter 519 of the laws of 2004, are amended to read as
30 follows:

31 1. The ~~[council]~~ commissioner may, ~~[if it determines]~~ upon a determi-
32 nation that serious operational deficiencies exist or serious financial
33 problems exist and such action is desirable, enter into an agreement
34 with the operator or owners of a fee-for-service continuing care retire-
35 ment community with respect to the appointment of a receiver to take
36 charge of the community under conditions as found acceptable by both
37 parties. Receivership commenced in accordance with the provisions of
38 this subdivision shall terminate at such time as may be provided in the
39 receivership agreement, or at such time as either party notifies the
40 other in writing that it wishes to terminate such receivership.

41 2. ~~[Upon request of the council, the]~~ The commissioner shall, at the
42 time of revocation, suspension or temporary suspension of a certificate
43 of authority, apply to the supreme court where the community is situated
44 for an order directing the owner of the land and/or structure on or in
45 which the community is located, to show cause why a receiver should not
46 be appointed to take charge of the community. In those cases where the
47 certificate of authority has been revoked, suspended or temporarily
48 suspended, the supreme court shall appoint a receiver that, where
49 reasonably possible, is a legal entity that holds a valid certificate of
50 authority. Such application shall contain proof by affidavit that the
51 facility has had its certificate of authority revoked, suspended or
52 temporarily suspended. Such order to show cause shall be returnable not
53 less than five days after service is completed and shall provide for
54 personal service of a copy thereof and the papers on which it is based,
55 on the owner or owners of the land and/or structures on or in which the
56 community is located. If any such owner and manager cannot with due

1 diligence be served personally within the county where the property is
2 located and within the time fixed in such order, then service may be
3 made on such person by posting a copy thereof in a conspicuous place
4 within the community in question, and by sending a copy thereof by
5 registered mail, return receipt requested, to such owner at the last
6 address registered by him or her with the department or in the absence
7 of such registration to the address set forth in the last recorded deed
8 with respect to the facility. Service shall be deemed complete on filing
9 proof of service thereof in the office of the county clerk, or the clerk
10 of the city of New York, as the case may be.

11 8. Any other provision of this article notwithstanding, the [~~council~~]
12 commissioner may, if it deems appropriate, grant to any community oper-
13 ating or scheduled to operate under a receivership authorized by this
14 section a certificate of authority, the duration of which shall be
15 limited to the duration of the receivership.

16 § 34. Paragraph g of subdivision 4 of section 4621 of the public
17 health law, as added by chapter 406 of the laws of 1991, is amended to
18 read as follows:

19 g. If the funds in an escrow account under this section, and any
20 interest thereon, are not released to the applicant within such time as
21 provided by rules and regulations adopted by the [~~council~~] commissioner,
22 then such funds shall be returned by the escrow agent to the person who
23 had made the payments or the person's legal representative.

24 § 35. Subdivision 1 of section 4623 of the public health law, as
25 amended by chapter 659 of the laws of 1997, is amended to read as
26 follows:

27 1. The [~~council~~] commissioner may approve an application for a certifi-
28 cate of authority and [~~the commissioner~~] may issue a certificate of
29 authority for the establishment and operation of a continuing care
30 retirement community under an arrangement which otherwise complies with
31 the requirements of this article except that the costs of nursing facili-
32 ty or home health care services are paid for in whole or in part by (a)
33 long term care insurance obtained and paid for by the resident or by
34 medical assistance payments in accordance with the partnership for long
35 term care program pursuant to section three hundred sixty-seven-f of the
36 social services law and section three thousand two hundred twenty-nine
37 of the insurance law or (b) other group or individual long term care
38 insurance approved by the superintendent and the council in connection
39 with the application. The council, in consultation with the superinten-
40 dent, shall provide for adequate disclosure to residents of their
41 options, rights and obligations under such an arrangement, and shall
42 establish standards for the remittance and collection of premiums and
43 monthly care fees.

44 § 36. The opening paragraph of subdivision 14 and subdivision 15 of
45 section 4657 of the public health law, as added by chapter 519 of the
46 laws of 2004, are amended to read as follows:

47 In accordance with regulations promulgated by the [~~council~~] commis-
48 sioner, the operator shall prepare a standard information sheet for each
49 approved fee-for-service continuing care retirement community, which
50 must be approved by the department, distributed with the community's
51 marketing materials and attached to the initial disclosure statement
52 prepared in accordance with this section. The standard information sheet
53 shall be prepared in plain language and in twelve point type and shall
54 include, but shall not be limited to the following information:

55 15. Any other information as may be required by regulations promulgat-
56 ed by the [~~council~~] commissioner.

§ 37. The opening paragraph and paragraph d of subdivision 2 of section 4658 of the public health law, as added by chapter 519 of the laws of 2004, are amended to read as follows:

The annual statement shall be in such form as the ~~[council]~~ commissioner prescribes and shall contain at least the following:

d. Such other reasonable financial and other information as the ~~[council]~~ commissioner may require with respect to the operator or the community, or its directors, controlling persons, trustees, members, branches, subsidiaries or affiliates to determine the financial status of the community and the management capabilities of the operator.

§ 38. Subdivision 2 of section 4651 of the public health law, as added by chapter 519 of the laws of 2004, is amended to read as follows:

2. "Certificates" or "certificate of authority" shall mean an authorization in writing, approved ~~[by the council]~~ and issued by the commissioner, for an operator to operate a fee-for-service continuing care retirement community and to enter into fee-for-service continuing care contracts pertaining to such community.

§ 39. Section 4654 of the public health law, as amended by chapter 545 of the laws of 2004, is amended to read as follows:

§ 4654. Authorization of fee-for-service continuing care retirement communities. The commissioner~~[, upon approval of the continuing care retirement community council,]~~ shall approve up to eight fee-for-service continuing care retirement communities to encourage affordable care options for middle income seniors, up to two of which may be operated by a for-profit entity.

§ 40. The opening paragraph of section 4659 of the public health law, as added by chapter 519 of the laws of 2004, is amended to read as follows:

A fee-for-service continuing care contract shall contain all of the following information in no less than twelve point type and in plain language, in addition to any other terms or matter as may be required by regulations ~~[adopted by the council and]~~ issued by the commissioner:

§ 41. The opening paragraph of subdivision 5 of section 4655 of the public health law, as amended by chapter 545 of the laws of 2004, is amended to read as follows:

If the approvals applicant has satisfied the criteria required by subdivision four-a of this section have been obtained, the ~~[council]~~ commissioner shall~~[, by majority vote,]~~ either approve or reject the application ~~[within sixty days of the date on which the last such approval has been obtained]~~. In order to approve the application, the ~~[council]~~ commissioner shall have determined that:

§ 42. Subdivisions 6 and 8 of section 4655 of the public health law, as added by chapter 519 of the laws of 2004, are amended to read as follows:

6. Any change in the legal entity operating the fee-for-service continuing care retirement community, or in a controlling person of the community shall require approval in the same manner as an original application; provided, however, that the ~~[council]~~ commissioner may waive any requirement to provide information that is not relevant to such change and provided, further, that the continued public need for the community shall be presumed.

8. ~~[If the council approves the application, the]~~ The commissioner shall issue a certificate of authority to the applicant upon approval of the application.

§ 43. Section 4611 of the public health law, as added by chapter 689 of the laws of 1989, the opening paragraph of subdivision 1 as further

1 amended by section 104 of part A of chapter 62 of the laws of 2011, is
2 amended to read as follows:

3 § 4611. Reserves and supporting assets. 1. An operator shall maintain
4 reserve liabilities and supporting assets in an amount and for the
5 purposes set forth in a regulation issued by the [~~superintendent of~~
6 ~~financial services~~] commissioner. Liquid assets must be maintained for
7 the following reserve liabilities:

8 a. Principal and interest payments and payments for taxes and insur-
9 ance for up to twelve months;

10 b. Total estimated operating costs for up to six months as set by the
11 [~~superintendent~~] commissioner;

12 c. Repairs and replacements for up to twelve months; and

13 d. In addition, the amount of liquid assets must meet any cash flow
14 requirements and conditions as set forth in a regulation.

15 2. The assets in support of reserve liabilities of subdivision one of
16 this section shall meet quantitative and qualitative standards set forth
17 in regulations issued by the [~~superintendent~~] commissioner.

18 § 44. The public health law is amended by adding a new section 4625 to
19 read as follows:

20 § 4625. Continuing care retirement community workgroup. 1. Within six
21 months of the effective date of this section, the commissioner shall
22 convene a continuing care retirement community workgroup (hereinafter
23 referred to in this section as the "workgroup"). The workgroup shall
24 consist of, at a minimum, the commissioner or his or her designee;
25 representatives of health care provider organizations; representatives
26 of continuing care retirement communities, and representatives who have
27 expertise in the continuing care retirement community industry.

28 2. Workgroup members shall receive no compensation for their services
29 as members of the workgroup, but shall be reimbursed for actual and
30 necessary expenses incurred in the performance of their duties.

31 3. The workgroup shall:

32 a. review existing continuing care retirement community and fee-for-
33 service continuing care retirement community models in the state and
34 nationally;

35 b. develop recommendations on creating cost-effective options for
36 financing the development of additional continuing care retirement
37 communities and fee-for-service continuing care retirement communities;
38 and

39 c. submit a report by January first, two thousand nineteen to the
40 commissioner, the council, the temporary president of the senate, the
41 speaker of the assembly, the chair of the senate health committee, and
42 the chair of the assembly health committee containing recommendations
43 for cost-effective options to encourage the growth of continuing care
44 retirement communities in the state of New York.

45 4. All state departments, commissions, agencies and public authorities
46 shall provide the workgroup with any reasonably requested assistance or
47 advice in a timely manner.

48 § 45. This act shall take effect on the one hundred eightieth day
49 after it shall have become a law, provided, however, that section 4625
50 of the public health law, as added by section forty-four of this act,
51 shall expire and be deemed repealed December 31, 2020; provided,
52 further, that effective immediately, the addition, amendment and/or
53 repeal of any rule or regulation necessary for the implementation of
54 this act on its effective date are authorized and directed to be made
55 and completed on or before such effective date.