AN ACT to amend the public health law, in relation to promoting efficient and effective oversight of continuing care retirement communities; and to repeal certain provisions of such law relating thereto

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

Section 1. 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] Commissioner; 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 than one such member 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]

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [−] is old law to be omitted. LBD03963-02-9
allowed the necessary and actual expenses which he shall incur in the
performance of his duties under this article.

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

   a. to receive applications from potential operators of continuing care
      retirement communities and to distribute such applications for review to
      the participating agencies;
   b. to develop uniform forms for applications for certificates of
      authority, to review the status of such applications, and to coordinate
      the review of such applications in order to minimize duplication or
      delay;
   c. to provide information to entities wishing to establish continuing
      care retirement communities and to persons interested in becoming resi-
      dents of such communities, to the extent appropriate, with concerns
      relating to the operations of such facilities;
   d. to issue certificates of authority to approved applicants;
   e. 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 commissioner 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 commissioner shall obtain
      and consider the recommendation of the state hospital review council
      and health 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;
   f. to require the reporting of such facts and information as the
      council may deem necessary to enforce the provisions of
      this article;
   g. 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 dupli-
      cation of inspection or regulatory review;
   h. to make such recommendations to the governor and the legisla-
      ture as may be necessary to encourage or further regulate the develop-
      ment of continuing care retirement communities;
   i. to establish and charge equitable and reasonable annual charg-
      es 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;
   j. 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;
   k. to adopt rules and regulations and amendments thereto to effec-
      tuate the provisions of this article;
   l. 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.
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 authori-

j. to carry out any other responsibilities entrusted to the commissioner pursuant to this chapter that may be necessary with regard to the health care activities of continuing care retirement communities;

m. to make available to all prospective operators all pertinent regu-

l. to make a final determination regarding an application for author-

k. o. to require the reporting of such facts and information as the commissioner may deem necessary to determine whether charac-

teristics 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. p. 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. q. 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.

§ 2. Section 4603 of the public health law is REPEALED and a new section 4603 is added to read as follows:

§ 4603. 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 than one such member 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 or she shall incur in the performance of his/her or 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 assist the commissioner on policy matters related to the establishment and operation of continuing care retirement communities;
   b. to 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 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.

§ 3. 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, and 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 the commissioner has approved an application meeting the requirements of this section and all other requirements established by law [has been approved by] including:
   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, provided that the review may be conducted by the commissioner or his or her designee, including any necessary independent actuarial review;
   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;
   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;

[e. aspects of the application relating to adult care facility beds, if any;]

[f. 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 application; 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:] provided, [however] further, 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] g. 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.

§ 4. 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:

§ 5. 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.

§ 6. 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.

2. Prior to approving such financing, the [council] commissioner shall find that:
   a. The operator has (i) executed contracts for at least seventy percent of all living units and has on deposit at least ten percent of the entrance fees or purchase price for such units; or (ii) executed contracts for at least sixty percent of all living units and has on deposit at least twenty-five percent of the entrance fees or purchase price for such units.
   b. The operator has demonstrated capability to comply fully with the requirements for a certificate of authority and has obtained a contingent certificate of authority pursuant to section forty-six hundred four of this article and the operator has agreed to meet the requirements of article eighteen-A of the general municipal law.
   c. The applicant is a not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law that is (i) eligible for tax-exempt financing under this section and (ii) is exempt from taxation pursuant to section 501(c)(3) of the federal internal revenue code, and either has (i) an equity position in the community equivalent to no less than fifteen percent of the amount to be financed in the aggregate; or (ii) covenants (A) to meet a ratio of cash and investments to outstanding debt (reserve ratio) of no less than twenty-five percent commencing at the end of the first quarter after twenty-four months from the receipt of a certificate of occupancy for the facility, and (B) to maintain that reserve ratio, as tested quarterly based upon the facility's interim financial statements and annually based upon audited financial statements, until debt reduction equal to twenty-five percent of total indebtedness is accomplished; and (c) to reduce total debt by twenty-five percent of the total indebtedness at the time the certificate of occupancy is received by no later than five years after the receipt of the certificate of occupancy.
   d. The operator has submitted in connection with the proposed financing a financial feasibility study, including a financial forecast and market study prepared by an independent firm nationally recognized for continuing care retirement community feasibility studies, demonstrating to the satisfaction of the [council] commissioner the financial soundness of the financing. In addition, the operator has submitted an analysis of economic costs and benefits, including job creation and retention, the estimated value of tax exemptions provided, the project's impact on local businesses and the availability and comparative cost of alternative financing sources. Such analysis shall be prepared by an independent entity.
e. The operator will establish and maintain a fully funded debt service reserve equal to the sum of maximum annual debt service (interest plus annual scheduled principal payments, not including balloon maturities, if any) on bonds authorized thereby having a maturity of ten years or less, plus the maximum annual debt service on bonds authorized thereby having a maturity of greater than ten years, provided, however, that in the case of tax-exempt bond issues, such debt service reserve shall not exceed the maximum amount permitted by federal tax law.

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

g. Unless all residents or continuing care at home contract holders have life care contracts, the operator has adequately made the assurances required by subdivision two of section forty-six hundred twenty-four of this article and has agreed to fund the liability in the event that such resident's or contract holder's assets are insufficient to pay for nursing facility services for a one year period.

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

a. provide the [council or its designee] commissioner with notice of any monetary default or covenant default in connection with such financing and shall further notify the [council or its designee] commissioner of any withdrawal from the debt service reserve fund established in connection with such financing;

b. respond in writing to the operational recommendations of the [council or its designee] commissioner with respect to protecting the interests of continuing care retirement community residents in the event of any monetary default or covenant default provided for in connection with such financing;

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

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

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

§ 7. 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 accord-
ance with standards adopted by the American Academy of Actuaries demon-
strating 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 commu-
nity resources and proof that such notification has been distributed to
all continuing care retirement contract holders.
§ 8. 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 retire-
ment 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 arti-
cle;
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 arti-
cle; and
3. Conditions set forth by the [New-York state] department [of finan-
cial services], based upon the [superintendent] commissioner's assess-
ment of the following:
(a) the overall financial impact on the community; and
(b) the submitted materials set forth in section forty-six hundred
five-a of this article.
§ 9. Section 4607 of the public health law, as added by chapter 689 of
the laws of 1989, paragraph d of subdivision 2 as amended by chapter 659
of the laws of 1997, is amended to read as follows:
§ 4607. Annual statement. 1. Within four months of close of the oper-
ator's fiscal year, unless an extension of time to file has been grant-
ed, the operator shall file an annual statement with the commissioner
[and superintendent] showing the condition as of the last day of the
preceding calendar or fiscal year. If the commissioner [and superinten-
dent-do] does not receive the annual statement within four months of the
end of the operator's fiscal year or have not granted an extension of
time to file, the [council] commissioner may charge a late fee.
2. The annual statement shall be in such form as the [council] commissioner prescribes and shall contain at least the following:
   a. Any change in status with respect to the information required to be submitted pursuant to section forty-six hundred four of this article;
   b. Financial statements audited by an independent certified public accountant, which shall contain, for two or more periods if the community has been in existence that long, the following:
      (i) an accountant's opinion and, in accordance with generally accepted accounting principles:
         (A) a balance sheet,
         (B) a statement of income and expenses,
         (C) a statement of equity or fund balances,
         (D) a statement of changes in financial position,
      (ii) notes to the financial statements considered customary or necessary to ensure full disclosure of the financial statements, financial condition, and operation;
   c. A detailed listing of the assets maintained for the reserves;
   d. A copy of the most recent actuarial review of the community, including such information as may be required by the [superintendent] commissioner including an opinion of a qualified consulting actuary, as to the current and projected soundness of the community, provided however that a new actuarial review must be submitted triennially; and
   e. 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.

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

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

§ 4658. Annual statement. 1. Within four months of close of an operator's fiscal year, unless an extension of time to file has been granted, the operator shall file an annual statement with the commissioner showing the condition as of the last day of the preceding calendar or fiscal year. If the commissioner does not receive the annual statement within four months of the end of the operator's fiscal year or has not granted an extension of time to file, the council may charge a late fee.

2. The annual statement shall be in such form as the [council] commissioner prescribes and shall contain at least the following:
   a. Any change in status with respect to the information required to be submitted pursuant to section forty-six hundred fifty-seven of this article;
   b. Financial statements audited by an independent certified public accountant, which shall contain, for two or more periods if the community has been in existence that long, the following:
      (i) notes to the financial statements considered customary or necessary to ensure full disclosure of the financial statements, financial condition, and operation; and
      (ii) an accountant's opinion and, in accordance with generally accepted accounting principles: (A) a balance sheet, (B) a statement of income and expenses, (C) a statement of equity or fund balances, and (D) a statement of changes in financial position;
c. A detailed listing of the assets maintained for the reserves; and

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

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

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

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

§ 12. 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 desig-
née] may at any time, and shall at least once every three years, visit
each community and examine the business of any applicant for a certif-
icate of authority and any operator engaged in the execution of continu-
ing care retirement contracts or continuing care at home contracts or
engaged in the performance of obligations under such contracts. Routine
examinations may be conducted by having documents designated by and
submitted to such [commissioners or superintendent] commissioner, which
shall include financial documents and records conforming to commonly
accepted accounting principles and practices. The final written report
of each such examination conducted by such [commissioners or superinten-
dent] commissioner shall be filed with the commissioner and, when so
filed, shall constitute a public record. A copy of each report shall be
provided to members of the continuing care retirement community council.
Any operator being examined shall, upon request, give reasonable and
timely access to all of its records. The representative or examiner
designated by the [commissioners or superintendent, respectively,]
commissioner may, at any time, examine the records and affairs and
inspect the community's facilities, whether in connection with a formal
examination or not.

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

§ 13. Subdivision 1 of section 4667 of the public health law, as added
by chapter 519 of the laws of 2004, is amended to read as follows:

1. The commissioner[or his or her 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 fee-for-service continuing care
contracts or engaged in the performance of obligations under such
contracts. Routine examinations may be conducted by having documents
designated by and submitted to the commissioner, which shall include
financial documents and records conforming to commonly accepted account-
ing principles and practices. The final written report of each such
examination conducted by the commissioner shall be filed with the
commissioner and, when so filed, shall constitute a public record. A
copy of each report shall be provided to members of the continuing care
retirement community council. Any operator being examined shall, upon
request, give reasonable and timely access to all of its records. The
representative or examiner designated by the commissioner may, at any
time, examine the records and affairs and inspect the community's facil-
ities, whether in connection with a formal examination or not.

§ 14. Section 4615 of the public health law, as added by chapter 689
of the laws of 1989, paragraph j of subdivision 1 as further amended by
section 104 of part A of chapter 62 of the laws of 2011, paragraph k of
subdivision 1 as amended by chapter 7 of the laws of 2015 and subdi-
vision 3 as amended by chapter 659 of the laws of 1997, is amended to read
as follows:

§ 4615. Revocation, suspension or annulment of certificate of authori-

§ 4615. Revocation, suspension or annulment of certificate of authori-
ty. 1. The [council] commissioner may revoke, suspend, limit or annul
the certificate of authority of an operator upon proof that:
  a. The operator failed to continue to meet the requirements for the
authority originally granted;
  b. The operator lacked one or more of the qualifications for the
certificate of authority as specified by this article;
  c. The operator made a material misstatement, misrepresentation, or
committed fraud in obtaining the certificate of authority, or in
attempting to obtain the same;
  d. The operator lacked fitness or was untrustworthy;
  e. The operator engaged in fraudulent or dishonest practices of
management in the conduct of business under the certificate of authori-
ty;
  f. The operator converted or withheld funds;
  g. The operator failed to comply with, or violated, any proper order,
rule or regulation of the council or violated any provision of this
article;
  h. The unsound business practices of the operator renders its further
transactions in this state hazardous or injurious to the public;
  i. The operator has refused to be examined or to produce its accounts,
records, and files for examination, or its officers, employees, or
controlling persons have refused to give information with respect to the
affairs of the community or to perform any other legal obligation as to
such examination;
  j. The [superintendent of financial services] commissioner has made a
determination that the operator is insolvent within the meaning of
section one thousand three hundred nine of the insurance law; or
  k. The commissioner has found violations of applicable statutes, rules
or regulations which threaten to affect directly the health, safety, or
welfare of a resident.

2. No certificate of authority shall be revoked, suspended, limited or
annulled without a hearing, except that a certificate of authority may
be temporarily suspended or limited prior to a hearing for a period not
in excess of sixty days upon written notice to the operator following a
finding by the commissioner that the public health or safety is in immi-
ent danger or there exists any condition or practice or a continuing
pattern of conditions or practices that pose an imminent danger to the
health or safety of any resident. Any delay in the hearing process occa-
sioned by the operator shall toll the running of said suspension or
limitation and shall not abridge the full time provided in this subdivi-
3. Any state agency which seeks to revoke, suspend, limit or annul the
certificate of authority or any other license or certificate required to
be obtained by an operator of a continuing care retirement community
pursuant to law, shall request the [council] commissioner to commence a
hearing pursuant to this section.
4. The [council] commissioner shall fix a time and place for the hear-
ing. The commissioner shall cause to be served in person or mailed by
registered or certified mail to the operator at least ten days before
the date fixed for the hearing a copy of the charges, together with the
notice of the time and place of the hearing. The operator shall file
with the commissioner not less than three days prior to the hearing a
written answer to the charges. The agency which initiated the proceeding
shall be responsible for providing evidence in support of the charges to
the commissioner in order to prepare a statement of charges and shall
provide evidence in support of the charges at the hearing.
5. All orders hereunder shall be subject to review as provided in
article seventy-eight of the civil practice law and rules. Application
for such review must be made within sixty days after service in person
or by registered or certified mail of a copy of the order upon the oper-
ator.
§ 15. Section 4616 of the public health law, as added by chapter 689
of the laws of 1989, the opening paragraph as amended by chapter 659 of
the laws of 1997, is amended to read as follows:
§ 4616. Appointment of a caretaker. Upon a determination by the [coun-
cil] commissioner that there exists operational deficiencies in a
continuing care retirement community that show:
1. a condition or conditions in substantial violation of the standards
for health, safety or patient care established under federal or state
law or regulations; or
2. that there exists in the facility a pattern or practice of
habitual violation of the standards of health, safety or patient care
established under federal or state law or regulations, the [council]
commissioner shall take the actions prescribed by section forty-six
hundred fifteen of this article, and, where the [council] commissioner
deems it to be in the public interest, the [council may request that the
commissioner, and upon request of the council the] commissioner shall[•]
petition a court of competent jurisdiction to appoint a caretaker as
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 seven-
teen 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.
§ 16. 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 determi-
nation 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. Receiv-
ership 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 [he or she] 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.

§ 17. 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:
   a. The operator failed to continue to meet the requirements for the authority originally granted;
   b. The operator lacked one or more of the qualifications for the certificate of authority as specified by this article;
   c. The operator made a material misstatement, misrepresentation, or committed fraud in obtaining the certificate of authority, or in attempting to obtain the same;
   d. The operator lacked fitness or was untrustworthy;
   e. The operator engaged in fraudulent or dishonest practices of management in the conduct of business under the certificate of authority;
   f. The operator converted or withheld funds;
   g. The operator failed to comply with, or violated, any proper order, rule or regulation of the council or violated any provision of this article;
   h. The unsound business practices of the operator renders its further transactions in this state hazardous or injurious to the public;
i. The operator has refused to be examined or to produce its accounts, records and files for examination, or its officers, employees or controlling persons have refused to give information with respect to the affairs of the community or to perform any other legal obligation as to such examination; or
j. The commissioner has found violations of applicable statutes, rules or regulations which threaten to affect directly the health, safety, or welfare of a resident of a fee-for-service continuing care retirement community.

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

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

4. The commissioner shall fix a time and place for the hearing. The commissioner shall cause to be served in person or mailed by registered or certified mail to the operator at least ten days before the date fixed for the hearing a copy of the charges, together with the notice of the time and place of the hearing. The operator shall file with the commissioner not less than three days prior to the hearing a written answer to the charges. The agency which initiated the proceeding shall be responsible for providing evidence in support of the charges to the commissioner in order to prepare a statement of charges and shall provide evidence in support of the charges at the hearing.

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

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

§ 4669. Appointment of a caretaker. Upon a determination by the commissioner that there exists operational deficiencies in a fee-for-service continuing care retirement community that show:
1. there exists in the facility a pattern or practice of habitual violation of the standards of health, safety or patient care established under federal or state law or regulations, the commissioner shall take the actions prescribed by section forty-six hundred sixty-eight of this article, and, where the commissioner deems it to be in the public interest, the commissioner may request the commissioner, and upon request of the council the commissioner shall[,] petition a court of competent jurisdiction to appoint a caretaker as defined in section twenty-eight hundred one of this chapter. The petition, the proceedings, and the procedures for appointment of a caretaker shall be governed by the provisions of section forty-six hundred seventy of this article, and the power, duties and rights of a caretaker appointed
pursuant to such section shall be the same as those authorized by sub-
vision four of such section; or
2. a condition or conditions in substantial violation of the standards
for health, safety or patient care established under federal or state
law or regulations.
§ 19. Subdivisions 1, 2 and 8 of section 4670 of the public health
law, as added by chapter 519 of the laws of 2004, are amended to read as
follows:
1. The commissioner may, upon a determin-
ation 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 fee-for-service continuing care retire-
ment 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 or her 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 commissioner may, if he or she deems appropriate, grant to any
community operating or scheduled to operate under a receivership author-
ized by this section a certificate of authority, the duration of which
shall be limited to the duration of the receivership.
§ 20. Paragraph g of subdivision 4 of section 4621 of the public
health law, as added by chapter 406 of the laws of 1991, is amended to
read as follows:
g. If the funds in an escrow account under this section, and any
interest thereon, are not released to the applicant within such time as
provided by rules and regulations adopted by the commissioner,
then such funds shall be returned by the escrow agent to the person who
had made the payments or the person's legal representative.

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

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

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

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

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

§ 23. 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] commis-
sioner prescribes and shall contain at least the following:

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

§ 24. 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 authori-
     zation in writing, approved [by the council] and issued by the commis-
sioner, 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.

§ 25. 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.
§ 26. 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:
§ 27. 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:
§ 28. 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.
§ 29. 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
amended by section 104 of part A of chapter 62 of the laws of 2011, is
amended to read as follows:
§ 4611. Reserves and supporting assets. 1. An operator shall maintain
reserve liabilities and supporting assets in an amount and for the
purposes set forth in a regulation issued by the [superintendent of
financial services] commissioner. Liquid assets must be maintained for
the following reserve liabilities:
a. Principal and interest payments and payments for taxes and insur-
ance for up to twelve months;
b. Total estimated operating costs for up to six months as set by the
[superintendent] commissioner;
c. Repairs and replacements for up to twelve months; and
2. The assets in support of reserve liabilities of subdivision one of
this section shall meet quantitative and qualitative standards set forth
in regulations issued by the [superintendent] commissioner.
§ 30. This act shall take effect on the one hundred eightieth day
after it shall have become a law. Effective immediately, the addition,
amendment and/or repeal of any rule or regulation necessary for the
implementation of this act on its effective date are authorized to be made and completed on or before such effective date.