

STATE OF NEW YORK

1803--A

2019-2020 Regular Sessions

IN SENATE

January 16, 2019

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

8 § 4602. [~~Continuing care retirement community council~~] Commissioner;
9 powers and duties. [~~1. The continuing care retirement community council
10 is hereby established, to consist of the following, or their designees:
11 the attorney general, the commissioner, the director of the office for
12 the aging, and eight public members appointed by the governor with the
13 advice and consent of the senate. Such public members shall be represen-
14 tative of the public, and have a demonstrated expertise or interest in
15 continuing care retirement communities, provided that no more than one
16 such member shall be a sponsor, owner, operator, manager, member of a
17 board of directors, or shareholder of a continuing care retirement
18 community. At least two public members shall be residents of a continu-
19 ing care retirement community. At least one of the public members shall
20 be a representative of an organization with demonstrated experience in
21 representing the interests of senior citizens. The public members of the
22 council shall have fixed terms of four years. The council shall be
23 chaired by the commissioner or his or her designee.~~]

24 ~~Members of such council shall serve without compensation for their~~
25 ~~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.

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1 ~~allowed the necessary and actual expenses which he shall incur in the~~
2 ~~performance of his duties under this article.~~

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

6 a. to receive applications from potential operators of continuing care
7 retirement communities and to distribute such applications for review to
8 the participating agencies;

9 b. to develop uniform forms for applications for certificates of
10 authority, to review the status of such applications, and to coordinate
11 the review of such applications in order to minimize duplication or
12 delay;

13 c. to provide information to entities wishing to establish continuing
14 care retirement communities and to persons interested in becoming resi-
15 dents of such communities, to the extent appropriate, with concerns
16 relating to the operation of such facilities;

17 d. to issue certificates of authority to approved applicants;

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

30 [~~b-~~] f. to require the reporting of such facts and information as the
31 [council] commissioner may deem necessary to enforce the provisions of
32 this article;

33 [~~a-~~] g. to coordinate the oversight of operating communities and to
34 assign review and regulatory responsibility for particular aspects of
35 such communities to the appropriate agencies, consistent with their
36 legal authority, to assure consistent state supervision without dupli-
37 cation of inspection or regulatory review;

38 [~~d-~~] h. to make such recommendations to the governor and the legisla-
39 ture as may be necessary to encourage or further regulate the develop-
40 ment of continuing care retirement communities;

41 [~~e-~~] i. to establish and charge equitable and reasonable annual charg-
42 es for operators, not to exceed fifty dollars per approved living unit,
43 to subsidize, in part, expenditures incurred in reviewing applications
44 for certificates of authority and in inspecting, regulating, supervising
45 and auditing continuing care retirement communities;

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

51 [~~g-~~] j. to adopt rules and regulations and amendments thereto to effec-
52 tuate the provisions of this article;

53 [~~h-~~] k. to revoke, suspend, limit, or annul a certificate of authority
54 under conditions set forth in section forty-six hundred fifteen of this
55 article, including when such action is taken at the specific request of
56 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.] l. 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 regulations regarding health and insurance necessary to comply with this article;~~

~~n. to [make a final determination regarding an application] approve or reject applications for authorization by prospective continuing care retirement community applicants, entities that have filed an application for a certificate of authority and operators, to enter into cancellable priority reservation agreements [where the commissioner has proposed to reject such application] and to collect refundable priority reservation fees from prospective residents;~~

~~k.] o. to require the reporting of such facts and information as the [council] commissioner 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.] 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.

1 Members of such council shall serve without compensation for their
 2 services as members of the council, except that each of them may be
 3 allowed the necessary and actual expenses which he or she shall incur in
 4 the performance of his/her or their duties under this article.

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

8 a. to assist the commissioner on policy matters related to the estab-
 9 lishment and operation of continuing care retirement communities;

10 b. to assist the commissioner in the development of the state's over-
 11 all policy regarding continuing care retirement communities and cause
 12 studies and research to be conducted as it may deem advisable and neces-
 13 sary; and

14 c. to make such recommendations to the governor and the legislature as
 15 may be necessary to encourage or further regulate the development of
 16 continuing care retirement communities.

17 § 3. Subdivision 4 of section 4604 of the public health law, as
 18 amended by chapter 659 of the laws of 1997, subparagraphs (i), (ii) and
 19 (iii) of paragraph a as further amended by section 104 of part A of
 20 chapter 62 of the laws of 2011, paragraphs b and d as amended by chapter
 21 549 of the laws of 2014, and paragraph c as amended by chapter 7 of the
 22 laws of 2015, is amended to read as follows:

23 4. No certificate of authority shall be issued unless the commissioner
 24 has approved an application meeting the requirements of this section and
 25 all other requirements established by law [~~has been approved by~~] includ-
 26 ing:

27 a. [~~(i)~~] the [~~superintendent of financial services as to the~~] actuari-
 28 al principles involved, the financial feasibility of the facility, the
 29 form and content of the proposed contracts to be entered into with resi-
 30 dents and insurance contracts between an operator and an insurer requir-
 31 ing the insurer to assume, wholly or in part, the cost of medical or
 32 health related services to be provided to a resident, provided that the
 33 review may be conducted by the commissioner or his or her designee,
 34 including any necessary independent actuarial review;

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

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

50 c. any monthly care fee charged to a resident which may be increased
 51 or decreased subject to approval by the [~~superintendent of financial~~
 52 ~~services~~] commissioner, provided, that monthly care fees may be
 53 increased or decreased without specific approval as long as such
 54 increase or decrease does not exceed a relevant cost index or indices
 55 which reflect all components of continuing care including the costs
 56 associated with provision of health care as determined and promulgated

1 at least annually by the [~~superintendent~~] commissioner or his or her
2 designee, including any necessary independent actuarial review, and
3 provided further that the [~~superintendent~~] commissioner is notified of
4 any such increase or decrease prior to its taking effect[~~,~~

5 ~~(iv) An~~];

6 d. the requirement that an individual resident's monthly care fee
7 shall not be modified because of the increased need for services of that
8 resident;

9 [~~b. the commissioner as to those~~] e. aspects of the application relat-
10 ing to adult care facility beds, if any;

11 [~~e.~~] f. review by the public health and health planning council as to
12 the establishment of a skilled nursing facility by the applicant and as
13 to such other facilities and services as may require the public health
14 and health planning council's approval of the application; provided,
15 however, that the recommendations of the health systems agency having
16 geographical jurisdiction of the area where the continuing care retire-
17 ment community is located shall not be required with respect to the
18 establishment of an on-site or affiliated residential health care facil-
19 ity to serve residents as part of the continuing care retirement commu-
20 nity, for up to the total number of residential health care facility
21 beds provided for in subdivision five of this section in communities
22 statewide;

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

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

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

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

45 § 5. Subdivisions 7 and 9 of section 4604 of the public health law,
46 subdivision 7 as amended by chapter 659 of the laws of 1997 and subdivi-
47 sion 9 as added by chapter 689 of the laws of 1989, are amended to read
48 as follows:

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

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

4 § 6. Section 4604-a of the public health law, as amended by chapter
5 659 of the laws of 1997, paragraph g of subdivision 2 as amended by
6 chapter 549 of the laws of 2014, is amended to read as follows:

7 § 4604-a. [~~Council~~] Commissioner approval required for industrial
8 development agency financing in connection with continuing care retire-
9 ment communities. 1. No person seeking financing in connection with a
10 continuing care retirement community through an industrial development
11 agency shall undertake such financing without the prior approval of the
12 [~~council~~] commissioner. Upon approving a proposed financing pursuant to
13 this section, the [~~council~~] commissioner shall issue a certificate of
14 authorization to the applicant.

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

17 a. The operator has (i) executed contracts for at least seventy
18 percent of all living units and has on deposit at least ten percent of
19 the entrance fees or purchase price for such units; or (ii) executed
20 contracts for at least sixty percent of all living units and has on
21 deposit at least twenty-five percent of the entrance fees or purchase
22 price for such units.

23 b. The operator has demonstrated capability to comply fully with the
24 requirements for a certificate of authority and has obtained a contin-
25 gent certificate of authority pursuant to section forty-six hundred four
26 of this article and the operator has agreed to meet the requirements of
27 article eighteen-A of the general municipal law.

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

45 d. The operator has submitted in connection with the proposed financ-
46 ing a financial feasibility study, including a financial forecast and
47 market study prepared by an independent firm nationally recognized for
48 continuing care retirement community feasibility studies, demonstrating
49 to the satisfaction of the [~~council~~] commissioner the financial sound-
50 ness of the financing. In addition, the operator has submitted an analy-
51 sis of economic costs and benefits, including job creation and
52 retention, the estimated value of tax exemptions provided, the project's
53 impact on local businesses and the availability and comparative cost of
54 alternative financing sources. Such analysis shall be prepared by an
55 independent entity.

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

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

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

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

21 a. provide the [~~council or its designee~~] commissioner with notice of
22 any monetary default or covenant default in connection with such financ-
23 ing and shall further notify the [~~council or its designee~~] commissioner
24 of any withdrawal from the debt service reserve fund established in
25 connection with such financing;

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

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

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

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

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

45 § 4605-a. Certificate of authority; authority to offer continuing care
46 at home contracts. A continuing care retirement community may offer
47 continuing care at home contracts upon approval by the [~~council~~] commis-
48 sioner to amend the continuing care retirement community's certificate
49 of authority. In order to qualify for an amendment to its certificate of
50 authority, the continuing care retirement community shall submit to the
51 commissioner the following:

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

54 (a) a description of the continuing care at home services that will be
55 provided, the market that will be served by the continuing care at home

1 contracts, and the fees to be charged to prospective continuing care at
2 home contract holders;

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

4 (c) an actuarial study prepared by an independent actuary in accord-
5 ance with standards adopted by the American Academy of Actuaries demon-
6 strating the impact that the continuing care at home contracts will have
7 on the overall operations of the continuing care retirement community
8 and further demonstrating that the addition of continuing care at home
9 contracts will not jeopardize the financial solvency of the continuing
10 care retirement community.

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

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

18 4. [~~A~~] a copy of the notification sent to continuing care retirement
19 contract holders describing the anticipated impact of the addition of
20 continuing care at home contracts on continuing care retirement communi-
21 ty resources and proof that such notification has been distributed to
22 all continuing care retirement contract holders.

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

25 § 4605-b. Certificate of authority; limitation on continuing care at
26 home contracts. The number of continuing care at home contracts
27 approved on a certificate of authority shall be limited to:

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

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

39 3. Conditions set forth by the [~~New York state~~] department [~~of finan-~~
40 ~~cial services~~], based upon the [~~superintendent~~] commissioner's assess-
41 ment of the following:

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

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

45 § 9. Section 4607 of the public health law, as added by chapter 689 of
46 the laws of 1989, paragraph d of subdivision 2 as amended by chapter 659
47 of the laws of 1997, is amended to read as follows:

48 § 4607. Annual statement. 1. Within four months of close of the oper-
49 ator's fiscal year, unless an extension of time to file has been grant-
50 ed, the operator shall file an annual statement with the commissioner
51 [~~and superintendent~~] showing the condition as of the last day of the
52 preceding calendar or fiscal year. If the commissioner [~~and superinten-~~
53 ~~dent do~~] does not receive the annual statement within four months of the
54 end of the operator's fiscal year or have not granted an extension of
55 time to file, the [~~council~~] commissioner may charge a late fee.

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

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

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

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

10 (A) a balance sheet,

11 (B) a statement of income and expenses,

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

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

14 (ii) notes to the financial statements considered customary or neces-
15 sary to ensure full disclosure of the financial statements, financial
16 condition, and operation;

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

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

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

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

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

35 § 4658. Annual statement. 1. Within four months of close of an opera-
36 tor's fiscal year, unless an extension of time to file has been granted,
37 the operator shall file an annual statement with the commissioner show-
38 ing the condition as of the last day of the preceding calendar or fiscal
39 year. If the commissioner does not receive the annual statement within
40 four months of the end of the operator's fiscal year or has not granted
41 an extension of time to file, the council may charge a late fee.

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

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

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

50 (i) notes to the financial statements considered customary or neces-
51 sary to ensure full disclosure of the financial statements, financial
52 condition, and operation; and

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

1 c. A detailed listing of the assets maintained for the reserves; and
2 d. Such other reasonable financial and other information as the [~~coun-~~
3 ~~oil~~] commissioner may require with respect to the operator or the commu-
4 nity, or its directors, controlling persons, trustees, members, branch-
5 es, subsidiaries or affiliates to determine the financial status of the
6 community and the management capabilities of the operator.

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

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

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

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

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

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

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

49 1. The commissioner[~~, or his or her designee,~~] may at any time, and
50 shall at least once every three years, visit each community and examine
51 the business of any applicant for a certificate of authority and any
52 operator engaged in the execution of fee-for-service continuing care
53 contracts or engaged in the performance of obligations under such
54 contracts. Routine examinations may be conducted by having documents
55 designated by and submitted to the commissioner, which shall include
56 financial documents and records conforming to commonly accepted account-

1 ing principles and practices. The final written report of each such
2 examination conducted by the commissioner shall be filed with the
3 commissioner and, when so filed, shall constitute a public record. A
4 copy of each report shall be provided to members of the continuing care
5 retirement community council. Any operator being examined shall, upon
6 request, give reasonable and timely access to all of its records. The
7 representative or examiner designated by the commissioner may, at any
8 time, examine the records and affairs and inspect the community's facil-
9 ities, whether in connection with a formal examination or not.

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

16 § 4615. Revocation, suspension or annulment of certificate of authori-
17 ty. 1. The [~~council~~] commissioner may revoke, suspend, limit or annul
18 the certificate of authority of an operator upon proof that:

19 a. The operator failed to continue to meet the requirements for the
20 authority originally granted;

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

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

26 d. The operator lacked fitness or was untrustworthy;

27 e. The operator engaged in fraudulent or dishonest practices of
28 management in the conduct of business under the certificate of authori-
29 ty;

30 f. The operator converted or withheld funds;

31 g. The operator failed to comply with, or violated, any proper order,
32 rule or regulation of the council or violated any provision of this
33 article;

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

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

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

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

47 2. No certificate of authority shall be revoked, suspended, limited or
48 annulled without a hearing, except that a certificate of authority may
49 be temporarily suspended or limited prior to a hearing for a period not
50 in excess of sixty days upon written notice to the operator following a
51 finding by the commissioner that the public health or safety is in immi-
52 nent danger or there exists any condition or practice or a continuing
53 pattern of conditions or practices that pose an imminent danger to the
54 health or safety of any resident. Any delay in the hearing process occa-
55 sioned by the operator shall toll the running of said suspension or

1 limitation and shall not abridge the full time provided in this subdivi-
2 sion.

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

8 4. The [~~eouncil~~] commissioner shall fix a time and place for the hear-
9 ing. The commissioner shall cause to be served in person or mailed by
10 registered or certified mail to the operator at least ten days before
11 the date fixed for the hearing a copy of the charges, together with the
12 notice of the time and place of the hearing. The operator shall file
13 with the commissioner not less than three days prior to the hearing a
14 written answer to the charges. The agency which initiated the proceeding
15 shall be responsible for providing evidence in support of the charges to
16 the commissioner in order to prepare a statement of charges and shall
17 provide evidence in support of the charges at the hearing.

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

23 § 15. Section 4616 of the public health law, as added by chapter 689
24 of the laws of 1989, the opening paragraph as amended by chapter 659 of
25 the laws of 1997, is amended to read as follows:

26 § 4616. Appointment of a caretaker. Upon a determination by the [~~eoun-
27 cil~~] commissioner that there exists operational deficiencies in a
28 continuing care retirement community that show:

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

32 2. [~~or~~] that there exists in the facility a pattern or practice of
33 habitual violation of the standards of health, safety or patient care
34 established under federal or state law or regulations, the [~~council~~]
35 commissioner shall take the actions prescribed by section forty-six
36 hundred fifteen of this article, and, where the [~~eouncil~~] commissioner
37 deems it to be in the public interest, the [~~council may request that the
38 commissioner, and upon request of the council the~~] commissioner shall[~~,~~]
39 petition a court of competent jurisdiction to appoint a caretaker as
40 defined in section twenty-eight hundred one of this chapter. The peti-
41 tion, the proceedings, and the procedures for appointment of a caretaker
42 shall be governed by the provisions of section forty-six hundred seven-
43 teen of this article, and the powers, duties and rights of a caretaker
44 appointed pursuant to such section shall be the same as those authorized
45 by subdivision four of such section.

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

50 1. The [~~eouncil~~] commissioner may, [~~if it determines~~] upon a determi-
51 nation that serious operational deficiencies exist or serious financial
52 problems exist and such action is desirable, enter into an agreement
53 with the operator or owners of a continuing care retirement community
54 with respect to the appointment of a receiver to take charge of the
55 community under conditions as found acceptable by both parties. Receiv-
56 ership commenced in accordance with the provisions of this subdivision

1 shall terminate at such time as may be provided in the receivership
2 agreement, or at such time as either party notifies the other in writing
3 that it wishes to terminate such receivership.

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

30 8. Any other provision of this article notwithstanding, the [~~council~~]
31 commissioner may, if [~~it~~] he or she deems appropriate, grant to any
32 community operating or scheduled to operate under a receivership author-
33 ized by this section a certificate of authority, the duration of which
34 shall be limited to the duration of the receivership.

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

37 § 4668. Revocation, suspension or annulment of certificate of authori-
38 ty. 1. The [~~council~~] commissioner may revoke, suspend, limit or annul
39 the certificate of authority of an operator upon proof that:

40 a. The operator failed to continue to meet the requirements for the
41 authority originally granted;

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

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

47 d. The operator lacked fitness or was untrustworthy;

48 e. The operator engaged in fraudulent or dishonest practices of
49 management in the conduct of business under the certificate of authori-
50 ty;

51 f. The operator converted or withheld funds;

52 g. The operator failed to comply with, or violated, any proper order,
53 rule or regulation of the council or violated any provision of this
54 article;

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

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

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

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

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

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

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

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

42 § 4669. Appointment of a caretaker. Upon a determination by the
43 [~~council~~] commissioner that there exists operational deficiencies in a
44 fee-for-service continuing care retirement community that show:

45 1. there exists in the facility a pattern or practice of habitual
46 violation of the standards of health, safety or patient care established
47 under federal or state law or regulations, the [~~council~~] commissioner
48 shall take the actions prescribed by section forty-six hundred sixty-
49 eight of this article, and, where the [~~council~~] commissioner deems it to
50 be in the public interest, the [~~council may request the commissioner,~~
51 ~~and upon request of the council the~~] commissioner shall[7] petition a
52 court of competent jurisdiction to appoint a caretaker as defined in
53 section twenty-eight hundred one of this chapter. The petition, the
54 proceedings, and the procedures for appointment of a caretaker shall be
55 governed by the provisions of section forty-six hundred seventy of this
56 article, and the power, duties and rights of a caretaker appointed

1 pursuant to such section shall be the same as those authorized by subdivi-
2 sion four of such section; or

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

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

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

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

45 8. Any other provision of this article notwithstanding, the [~~council~~]
46 commissioner may, if [~~it~~] he or she deems appropriate, grant to any
47 community operating or scheduled to operate under a receivership author-
48 ized by this section a certificate of authority, the duration of which
49 shall be limited to the duration of the receivership.

50 § 20. Paragraph g of subdivision 4 of section 4621 of the public
51 health law, as added by chapter 406 of the laws of 1991, is amended to
52 read as follows:

53 g. If the funds in an escrow account under this section, and any
54 interest thereon, are not released to the applicant within such time as
55 provided by rules and regulations adopted by the [~~council~~] commissioner,

1 then such funds shall be returned by the escrow agent to the person who
2 had made the payments or the person's legal representative.

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

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

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

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

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

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

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

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

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

48 2. "Certificates" or "certificate of authority" shall mean an authori-
49 zation in writing, approved [~~by the council~~] and issued by the commis-
50 sioner, for an operator to operate a fee-for-service continuing care
51 retirement community and to enter into fee-for-service continuing care
52 contracts pertaining to such community.

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

55 § 4654. Authorization of fee-for-service continuing care retirement
56 communities. The commissioner [~~, upon approval of the continuing care~~

1 ~~retirement community council,~~ shall approve up to eight fee-for-service
2 continuing care retirement communities to encourage affordable care
3 options for middle income seniors, up to two of which may be operated by
4 a for-profit entity.

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

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

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

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

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

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

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

34 § 29. Section 4611 of the public health law, as added by chapter 689
35 of the laws of 1989, the opening paragraph of subdivision 1 as further
36 amended by section 104 of part A of chapter 62 of the laws of 2011, is
37 amended to read as follows:

38 § 4611. Reserves and supporting assets. 1. An operator shall maintain
39 reserve liabilities and supporting assets in an amount and for the
40 purposes set forth in a regulation issued by the [~~superintendent of~~
41 ~~financial services~~] commissioner. Liquid assets must be maintained for
42 the following reserve liabilities:

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

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

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

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

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

53 § 30. This act shall take effect on the one hundred eightieth day
54 after it shall have become a law. Effective immediately, the addition,
55 amendment and/or repeal of any rule or regulation necessary for the

1 implementation of this act on its effective date are authorized to be
2 made and completed on or before such effective date.