

STATE OF NEW YORK

7483

2023-2024 Regular Sessions

IN SENATE

May 31, 2023

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the insurance 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.~~

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

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~~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 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 residents of such communities, to the extent appropriate, with concerns relating to the operation 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 [council] 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 [council] commissioner shall obtain and consider the recommendation of the [state hospital review] public health and health 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;

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

[c-] 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 duplication of inspection or regulatory review;

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

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

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

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

[h-] k. to revoke, suspend, limit, or annul a certificate of authority under conditions set forth in section forty-six hundred fifteen of this

1 article, including when such action is taken at the specific request of
2 any participating council agency. [~~When action has been taken by the~~
3 ~~commissioner pursuant to subdivision seven of section forty six hundred~~
4 ~~three of this article, the council shall meet as soon as reasonably~~
5 ~~possible to approve or disapprove the action of the commissioner and~~
6 ~~shall take such further action as may be appropriate;~~

7 ~~i. to develop guidelines for applications for certificates of authori-~~
8 ~~ty;~~

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

12 m. to make available to all prospective operators all pertinent regu-
13 lations regarding health and insurance necessary to comply with this
14 article;

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

22 ~~[k.]~~ o. to require the reporting of such facts and information as the
23 [council] commissioner may deem necessary to determine whether charac-
24 teristics of residential health care demonstration facilities such as
25 comprehensive systems of residential and support services for the elder-
26 ly may be successfully incorporated into existing or approved continuing
27 care retirement communities;

28 ~~[l.]~~ p. to review and approve or reject applications by continuing
29 care retirement community operators to use entrance fees to assist the
30 operator in financing the construction or purchase of a proposed contin-
31 uing care retirement community in accordance with paragraph b of subdivi-
32 sion six of section forty-six hundred ten of this article; and

33 ~~[m.]~~ q. to review and approve or reject any proposed financing by
34 industrial development agencies of continuing care retirement communi-
35 ties pursuant to article eighteen-A of the general municipal law as
36 authorized by section forty-six hundred four-a of this article.

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

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

43 § 4603. Continuing care retirement community council; powers and
44 duties. 1. The continuing care retirement community council is hereby
45 established, to consist of the following, or their designees: the attor-
46 ney general; the commissioner; the director of the office for the aging;
47 and eight public members appointed by the governor with the advice and
48 consent of the senate. Such public members shall be representative of
49 the public, and have a demonstrated expertise or interest in continuing
50 care retirement communities; provided that no more than one such member
51 shall be a sponsor, owner, operator, manager, member of a board of
52 directors, or shareholder of a continuing care retirement community. At
53 least two public members shall be residents of a continuing care retire-
54 ment community. At least one of the public members shall be a represen-
55 tative of an organization with demonstrated experience in representing
56 the interests of senior citizens. The public members of the council

1 shall have fixed terms of four years. The council shall be chaired by
2 the commissioner or his or her designee.

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

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

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

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

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

19 § 3. Subdivision 4 of section 4604 of the public health law, as
20 amended by chapter 659 of the laws of 1997, subparagraphs (i), (ii) and
21 (iii) of paragraph a as further amended by section 104 of part A of
22 chapter 62 of the laws of 2011, paragraphs b and d as amended by chapter
23 549 of the laws of 2014, and paragraph c as amended by chapter 7 of the
24 laws of 2015, is amended to read as follows:

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

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

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

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

52 c. any monthly care fee charged to a resident which may be increased
53 or decreased subject to approval by the [~~superintendent of financial~~
54 ~~services~~] commissioner, provided, that monthly care fees may be
55 increased or decreased without specific approval as long as such
56 increase or decrease does not exceed a relevant cost index or indices

1 which reflect all components of continuing care including the costs
2 associated with provision of health care as determined and promulgated
3 at least annually by the ~~[superintendent]~~ commissioner or his or her
4 designee, including any necessary independent actuarial review, and
5 provided further that the ~~[superintendent]~~ commissioner is notified of
6 any such increase or decrease prior to its taking effect[~~-~~

7 ~~(iv)-An];~~

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

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

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

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

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

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

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

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

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

1 and provided, further, that the continued public need for the community
2 shall be presumed.

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

6 § 6. Section 4604-a of the public health law, as amended by chapter
7 659 of the laws of 1997, paragraph g of subdivision 2 as amended by
8 chapter 549 of the laws of 2014, is amended to read as follows:

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

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

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

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

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

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

1 alternative financing sources. Such analysis shall be prepared by an
2 independent entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 end of the operator's fiscal year or have not granted an extension of
2 time to file, the [~~council~~] commissioner may charge a late fee.

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

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

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

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

12 (A) a balance sheet,

13 (B) a statement of income and expenses,

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (ii) an accountant's opinion and, in accordance with generally
56 accepted accounting principles: (A) a balance sheet, (B) a statement of

1 income and expenses, (C) a statement of equity or fund balances, and (D)
2 a statement of changes in financial position;

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

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

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

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

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

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

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

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

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

§ 4615. 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;

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 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 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 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

1 the commissioner in order to prepare a statement of charges and shall
2 provide evidence in support of the charges at the hearing.

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

8 § 14. Section 4616 of the public health law, as added by chapter 689
9 of the laws of 1989, the opening paragraph as amended by chapter 659 of
10 the laws of 1997, is amended to read as follows:

11 § 4616. Appointment of a caretaker. Upon a determination by the [~~coun-~~
12 ~~cil~~] commissioner that there exists operational deficiencies in a
13 continuing care retirement community that show:

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

17 2. [~~or~~] that there exists in the facility a pattern or practice of
18 habitual violation of the standards of health, safety or patient care
19 established under federal or state law or regulations, the [~~council~~]
20 commissioner shall take the actions prescribed by section forty-six
21 hundred fifteen of this article, and, where the [~~council~~] commissioner
22 deems it to be in the public interest, the [~~council may request that the~~
23 ~~commissioner, and upon request of the council the~~] commissioner shall[~~7~~]
24 petition a court of competent jurisdiction to appoint a caretaker as
25 defined in section twenty-eight hundred one of this chapter. The peti-
26 tion, the proceedings, and the procedures for appointment of a caretaker
27 shall be governed by the provisions of section forty-six hundred seven-
28 teen of this article, and the powers, duties and rights of a caretaker
29 appointed pursuant to such section shall be the same as those authorized
30 by subdivision four of such section.

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

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

45 2. [~~Upon request of the council, the~~] The commissioner shall, at the
46 time of revocation, suspension or temporary suspension of a certificate
47 of authority, apply to the supreme court where the community is situated
48 for an order directing the owner of the land and/or structure on or in
49 which the community is located, to show cause why a receiver should not
50 be appointed to take charge of the community. In those cases where the
51 certificate of authority has been revoked, suspended or temporarily
52 suspended, the supreme court shall appoint a receiver that, where
53 reasonably possible, is a legal entity that holds a valid certificate of
54 authority. Such application shall contain proof by affidavit that the
55 facility has had its certificate of authority revoked, suspended, or
56 temporarily suspended. Such order to show cause shall be returnable not

1 less than five days after service is completed and shall provide for
2 personal service of a copy thereof and the papers on which it is based,
3 on the owner or owners of the land and/or structures on or in which the
4 community is located. If any such owner and manager cannot with due
5 diligence be served personally within the county where the property is
6 located and within the time fixed in such order, then service may be
7 made on such person by posting a copy thereof in a conspicuous place
8 within the community in question, and by sending a copy thereof by
9 registered mail, return receipt requested, to such owner at the last
10 address registered by him with the department or in the absence of such
11 registration to the address set forth in the last recorded deed with
12 respect to the facility. Service shall be deemed complete on filing
13 proof of service thereof in the office of the county clerk, or the clerk
14 of the city of New York, as the case may be.

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

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

22 § 4668. Revocation, suspension or annulment of certificate of authori-
23 ty. 1. The ~~[council]~~ commissioner may revoke, suspend, limit or annul
24 the certificate of authority of an operator upon proof that:

25 a. The operator failed to continue to meet the requirements for the
26 authority originally granted;

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

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

32 d. The operator lacked fitness or was untrustworthy;

33 e. The operator engaged in fraudulent or dishonest practices of
34 management in the conduct of business under the certificate of authori-
35 ty;

36 f. The operator converted or withheld funds;

37 g. The operator failed to comply with, or violated, any proper order,
38 rule or regulation of the council or violated any provision of this
39 article;

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

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

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

51 2. No certificate of authority shall be revoked, suspended, limited or
52 annulled without a hearing, except that a certificate of authority may
53 be temporarily suspended or limited prior to a hearing for a period not
54 in excess of sixty days upon written notice to the operator following a
55 finding by the commissioner that public health or safety is in imminent
56 danger or there exists any condition or practice or a continuing pattern

1 of conditions or practices that pose an imminent danger to the health or
2 safety of any resident. Any delay in the hearing process occasioned by
3 the operator shall toll the running of said suspension or limitation and
4 shall not abridge the full time provided in this subdivision.

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

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

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

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

27 § 4669. Appointment of a caretaker. Upon a determination by the
28 ~~[council]~~ commissioner that there exists operational deficiencies in a
29 fee-for-service continuing care retirement community that show:

30 1. there exists in the facility a pattern or practice of habitual
31 violation of the standards of health, safety or patient care established
32 under federal or state law or regulations, the ~~[council]~~ commissioner
33 shall take the actions prescribed by section forty-six hundred sixty-
34 eight of this article, and, where the ~~[council]~~ commissioner deems it to
35 be in the public interest, the ~~[council may request the commissioner,~~
36 ~~and upon request of the council the]~~ commissioner shall^[7] petition a
37 court of competent jurisdiction to appoint a caretaker as defined in
38 section twenty-eight hundred one of this chapter. The petition, the
39 proceedings, and the procedures for appointment of a caretaker shall be
40 governed by the provisions of section forty-six hundred seventy of this
41 article, and the power, duties and rights of a caretaker appointed
42 pursuant to such section shall be the same as those authorized by subdivi-
43 sion four of such section; or

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

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

50 1. The ~~[council]~~ 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 fee-for-service continuing care retire-
54 ment community with respect to the appointment of a receiver to take
55 charge of the community under conditions as found acceptable by both
56 parties. Receivership commenced in accordance with the provisions of

1 this subdivision shall terminate at such time as may be provided in the
2 receivership agreement, or at such time as either party notifies the
3 other in writing 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 or her with the department or in the absence
26 of such registration to the address set forth in the last recorded deed
27 with 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 § 19. Paragraph g of subdivision 4 of section 4621 of the public
36 health law, as added by chapter 406 of the laws of 1991, is amended to
37 read as follows:

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

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

46 1. The ~~[council]~~ commissioner may approve an application for a certifi-
47 cate of authority and ~~[the commissioner]~~ may issue a certificate of
48 authority for the establishment and operation of a continuing care
49 retirement community under an arrangement which otherwise complies with
50 the requirements of this article except that the costs of nursing facil-
51 ity or home health care services are paid for in whole or in part by (a)
52 long term care insurance obtained and paid for by the resident or by
53 medical assistance payments in accordance with the partnership for long
54 term care program pursuant to section three hundred sixty-seven-f of the
55 social services law and section three thousand two hundred twenty-nine
56 of the insurance law or (b) other group or individual long term care

1 insurance approved by the superintendent and the council in connection
2 with the application. The council, in consultation with the superinten-
3 dent, shall provide for adequate disclosure to residents of their
4 options, rights and obligations under such an arrangement, and shall
5 establish standards for the remittance and collection of premiums and
6 monthly care fees.

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

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

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

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

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

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

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

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

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

39 § 4654. Authorization of fee-for-service continuing care retirement
40 communities. The commissioner[, ~~upon approval of the continuing care~~
41 ~~retirement community council,~~] shall approve up to eight fee-for-service
42 continuing care retirement communities to encourage affordable care
43 options for middle income seniors, up to two of which may be operated by
44 a for-profit entity.

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

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

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

55 If the [~~approvals~~] applicant has satisfied the criteria required by
56 subdivision four-a of this section have been obtained, the [~~council~~]

1 commissioner shall~~[, by majority vote,]~~ either approve or reject the
2 application ~~[within sixty days of the date on which the last such~~
3 ~~approval has been obtained]~~. In order to approve the application, the
4 ~~[council]~~ commissioner shall have determined that:

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

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

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

18 § 28. Section 4611 of the public health law, as added by chapter 689
19 of the laws of 1989, the opening paragraph of subdivision 1 as further
20 amended by section 104 of part A of chapter 62 of the laws of 2011, is
21 amended to read as follows:

22 § 4611. Reserves and supporting assets. 1. An operator shall maintain
23 reserve liabilities and supporting assets in an amount and for the
24 purposes set forth in a regulation issued by the ~~[superintendent of~~
25 ~~financial services]~~ commissioner. Liquid assets must be maintained for
26 the following reserve liabilities:

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

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

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

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

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

37 § 29. Section 1119 of the insurance law, as amended by chapter 659 of
38 the laws of 1997, is amended to read as follows:

39 § 1119. Limited exemption for continuing care retirement communities.
40 ~~[(a)]~~ An organization complying with the provisions of article forty-six
41 of the public health law may operate without being licensed under this
42 chapter and without being subject to any provisions of this chapter,
43 except to the extent that such organization must comply with the
44 provisions of this chapter by virtue of such article~~[, and such organ-~~
45 ~~ization must comply with rules and regulations of the superintendent~~
46 ~~relating to:~~

47 ~~(1) financial feasibility of the continuing care retirement community,~~
48 ~~(2) actuarial principles established relating to such communities,~~
49 ~~(3) approval of continuing care retirement contracts and the rates and~~
50 ~~rating system, if any, for such contracts.~~

51 ~~(b) The superintendent may promulgate regulations in effectuating the~~
52 ~~purposes and the provisions of this chapter and article forty-six of the~~
53 ~~public health law, which may include requirements applicable to the~~
54 ~~contracts between a continuing care retirement community and its resi-~~
55 ~~dents.~~

~~(c) Such organization shall be subject to the provisions of article seventy four of this chapter. Prior to commencing action under article seventy four, the superintendent shall consult with the continuing care retirement community council established pursuant to section forty-six hundred two of the public health law].~~

§ 30. Subdivision 1 of section 4621 of the public health law, as amended by chapter 659 of the laws of 1997, is amended to read as follows:

1. No person, partnership, corporation or other entity shall solicit, collect or receive any priority reservation fee or enter into any agreement relating to the payment of any priority reservation fee with respect to any continuing care retirement community to be operated within the state without first obtaining the written authorization of the commissioner. The commissioner shall not grant such authorization to an entity that has not yet obtained a certificate of authority unless the requirements of this section and any applicable regulations are met. Upon obtaining the authorization of the commissioner under this section, a prospective continuing care retirement community applicant or an entity that has filed an application for a certificate of authority may enter into cancelable priority reservation agreements with prospective residents and solicit, collect and receive refundable priority reservation fees for direct deposit into an escrow account, prior to obtaining a certificate of authority, for the purpose of evaluating market demand for a proposed continuing care retirement community and for the purpose of guaranteeing to prospective residents an opportunity for priority placement in a continuing care retirement community. A priority reservation fee shall not exceed two thousand dollars unless the commissioner, in his or her discretion, establishes that a priority reservation fee may exceed two thousand dollars. A non-refundable priority reservation agreement application fee shall not exceed the maximum amount [~~for such fee as set forth in regulations adopted by the council~~] established by the commissioner, in his or her discretion.

§ 31. Subdivision 1 of section 4622 of the public health law, as amended by chapter 659 of the laws of 1997, is amended to read as follows:

1. No person, partnership, corporation or other entity shall solicit, collect or receive any priority reservation fee or enter into any agreement relating to the payment of any priority reservation fee with respect to any continuing care retirement community operated or to be operated within the state without first obtaining the written authorization of the commissioner. The commissioner shall not grant such authorization to an entity that has obtained a certificate of authority unless the requirements of this section and any applicable regulations are met. Upon obtaining the authorization of the commissioner under this section, an operator may enter into cancelable priority reservation agreements with prospective residents and solicit, collect and receive refundable priority reservation fees for direct deposit into an escrow account for the purpose of guaranteeing to prospective residents an opportunity for priority placement in the continuing care retirement community for which the operator has obtained a certificate of authority. A priority reservation fee shall not exceed two thousand dollars unless the commissioner, in his or her discretion, establishes that a priority reservation fee may exceed two thousand dollars. A non-refundable priority reservation agreement application fee shall not exceed the maximum amount [~~for such fee as set forth in regulations adopted by the council~~] established by the commissioner, in his or her discretion.

§ 32. Subdivision 1 of section 4674 of the public health law, as added by chapter 519 of the laws of 2004, is amended to read as follows:

1. No person, partnership, corporation or other entity shall solicit, collect or receive any priority reservation fee or enter into any agreement relating to the payment of any priority reservation fee with respect to any fee-for-service continuing care retirement community to be operated within the state without first obtaining the written authorization of the commissioner. The commissioner shall not grant such authorization to an entity that has not yet obtained a certificate of authority unless the requirements of this section and any applicable regulations are met. Upon obtaining the authorization of the commissioner under this section, a prospective community applicant or an entity having filed an application for a certificate of authority may enter into cancelable priority reservation agreements with prospective residents and solicit, collect and receive refundable priority reservation fees for direct deposit into an escrow account, prior to obtaining a certificate of authority, for the purpose of evaluating market demand for a proposed fee-for-service continuing care retirement community and for the purpose of guaranteeing to prospective residents an opportunity for priority placement in a fee-for-service continuing care retirement community. A priority reservation fee shall not exceed two thousand dollars unless the commissioner, in his or her discretion, establishes that a priority reservation fee may exceed two thousand dollars. A non-refundable priority reservation agreement application fee shall not exceed the maximum amount [~~for such fee as set forth in regulations adopted by the council~~] established by the commissioner, in his or her discretion.

§ 33. Subdivision 1 of section 4675 of the public health law, as added by chapter 519 of the laws of 2004, is amended to read as follows:

1. No person, partnership, corporation or other entity shall solicit, collect or receive any priority reservation fee or enter into any agreement relating to the payment of any priority reservation fee with respect to any fee-for-service continuing care retirement community operated or to be operated within the state without first obtaining the written authorization of the commissioner. The commissioner shall not grant such authorization to an entity that has obtained a certificate of authority unless the requirements of this section and any applicable regulations are met. Upon obtaining the authorization of the commissioner under this section, an operator may enter into cancelable priority reservation agreements with prospective residents and solicit, collect and receive refundable priority reservation fees for direct deposit into an escrow account for the purpose of guaranteeing to prospective residents an opportunity for priority placement in the fee-for-service continuing care retirement community for which the operator has obtained a certificate of authority. A priority reservation fee shall not exceed two thousand dollars unless the commissioner, in his or her discretion, establishes that a priority reservation fee may exceed two thousand dollars. A non-refundable priority reservation agreement application fee shall not exceed the maximum amount [~~for such fee as set forth in regulations adopted by the council~~] established by the commissioner, in his or her discretion.

§ 34. No later than November 1, 2023, the commissioner of health, in conjunction with the superintendent of financial services, shall evaluate and make recommendations regarding the additional resources required by the department of health to implement this act to the governor, the

1 division of the budget, the senate finance committee and the assembly
2 ways and means committee.

3 § 35. Notwithstanding section 163 of the state finance law, the
4 commissioner of health may enter into new contracts, or in his or her
5 discretion, institute a contract addendum to an existing contract to
6 secure actuarial and other services, necessary to implement this act.

7 § 36. This act shall take effect immediately; provided, however, that
8 sections three, nine, eleven, twelve, thirteen, twenty-eight and twen-
9 ty-nine of this act shall take effect June 1, 2024. Effective imme-
10 diately, the addition, amendment and/or repeal of any rule or regulation
11 necessary for the implementation of this act on its effective date are
12 authorized to be made and completed on or before such effective date.