STATE OF NEW YORK

7742

2023-2024 Regular Sessions

IN ASSEMBLY

June 6, 2023

Introduced by M. of A. PAULIN -- read once and referred 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:

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

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

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

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

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

~~j.~~] 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.

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

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

a. to assist the commissioner on policy matters related to the establishment and operation of continuing care retirement communities;

b. to assist the commissioner in the development of the state's overall policy regarding continuing care retirement communities and cause studies and research to be conducted as it may deem advisable and necessary; and

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

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

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

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

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

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

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

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

~~(iv) An~~];

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

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

[~~c.~~] f. review by the public health and health planning council as to the establishment of a skilled nursing facility by the applicant and as to such other facilities and services as may require the public health and health planning council's approval of the application; provided, however, that the recommendations of the health systems agency having geographical jurisdiction of the area where the continuing care retirement community is located shall not be required with respect to the establishment of an on-site or affiliated residential health care facility to serve residents as part of the continuing care retirement community, for up to the total number of residential health care facility beds provided for in subdivision five of this section in communities statewide;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The operator has submitted in connection with the proposed financing a financial feasibility study, including a financial forecast and market study prepared by an independent firm nationally recognized for continuing care retirement community feasibility studies, demonstrating to the satisfaction of the [~~council~~] **commissioner** the financial soundness of the financing. In addition, the operator has submitted an analysis of economic costs and benefits, including job creation and retention, the estimated value of tax exemptions provided, the project's impact on local businesses and the availability and comparative cost of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 4607. Annual statement. 1. Within four months of close of the operator's fiscal year, unless an extension of time to file has been granted, the operator shall file an annual statement with the commissioner [~~and superintendent~~] showing the condition as of the last day of the preceding calendar or fiscal year. If the commissioner [~~and superintendent do~~] **does** not receive the annual statement within four months of the

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

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

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

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

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

(A) a balance sheet,

(B) a statement of income and expenses,

(C) a statement of equity or fund balances,

(D) a statement of changes in financial position,

(ii) notes to the financial statements considered customary or necessary to ensure full disclosure of the financial statements, financial condition, and operation;

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

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

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

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

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

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

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

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

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

(i) notes to the financial statements considered customary or necessary to ensure full disclosure of the financial statements, financial condition, and operation; and

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

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

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

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

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

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

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

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

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

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

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

§ 4615. Revocation, suspension or annulment of certificate of 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

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

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

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

§ 4616. Appointment of a caretaker. Upon a determination by the [~~council~~] **commissioner** that there exists operational deficiencies in a continuing care retirement community that show:

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

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

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

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

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

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

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

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

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

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

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

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

d. The operator lacked fitness or was untrustworthy;

e. The operator engaged in fraudulent or dishonest practices of management in the conduct of business under the certificate of authority;

f. The operator converted or withheld funds;

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

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

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

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

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

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

3. Any state agency which seeks to revoke, suspend, limit or annul the certificate of authority or any other license or certificate required to be obtained by an operator of a community pursuant to law, shall request the [~~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 the commissioner in order to prepare a statement of charges and shall provide evidence in support of the charges at the hearing.

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

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

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

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

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

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

1. The [~~council~~] **commissioner** may, [~~if it determines~~] **upon a determination** that serious operational deficiencies exist or serious financial problems exist and such action is desirable, enter into an agreement with the operator or owners of a fee-for-service continuing care retirement community with respect to the appointment of a receiver to take charge of the community under conditions as found acceptable by both parties. Receivership commenced in accordance with the provisions of

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

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

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

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

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

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

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

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

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

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

15. Any other information as may be required by regulations promulgated by the [~~council~~] commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Principal and interest payments and payments for taxes and insurance for up to twelve months;

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

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

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

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

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

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

~~(1) financial feasibility of the continuing care retirement community,~~

~~(2) actuarial principles established relating to such communities,~~

~~(3) approval of continuing care retirement contracts and the rates and rating system, if any, for such contracts.~~

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

~~(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

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

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

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