§ 4604. Certificate of authority required; application and approval. 1. No person shall construct, expand, acquire, maintain, or operate a continuing care retirement community, or enter into a contract as an operator, or solicit the execution of any contract for continuing care retirement community services to be provided within the state or advertise itself or otherwise hold itself as a "continuing care retirement community", without obtaining a certificate of authority pursuant to this article; provided, however, nothing in this subdivision shall prohibit a person, authorized pursuant to section forty-six hundred twenty-one or forty-six hundred twenty-two of this article, from entering into priority reservation agreements, soliciting, collecting or receiving priority reservation fees, or constructing and maintaining sales offices and model units with respect to a proposed continuing care retirement community.

2. In order to receive a certificate of authority to enter into contracts with respect to a particular community, a person or persons, hereinafter designated as the applicant, shall apply for a certificate of authority on forms prescribed by the commissioner and, in addition, shall submit the following:

a. a feasibility study, including a market analysis describing the characteristics of the population to be served;

b. an actuarial study;

c. an initial disclosure statement as provided pursuant to section forty-six hundred six of this title;

d. a copy of the proposed forms of contracts to be entered into with residents;

e. complete details of any agreements with a licensed insurer, including copies of proposed contracts, requiring the insurer to assume, wholly or in part, the cost of medical or health related services to be provided to a resident pursuant to a continuing care retirement contract or continuing care at home contract;

f. a copy of each of the basic organizational documents and agreements of the applicant of all participating entities;

g. a copy of the bylaws, rules and regulations and internal governing documents of the applicant;

h. architectural program and sketches for the community;

i. the proposed community plan, including the number of independent living units, skilled nursing facility beds, adult care facility beds, if any, and a description of other social and health services provided by the community;

j. copies of financial and personal disclosure information as required by the council for the applicant and members of the board, officers, and controlling persons of the proposed continuing care retirement community, including:

(i) information necessary for the determination by the council of character, competence, and experience, where information adequate to make such determinations is not otherwise available to the council,

(ii) a list of continuing care retirement communities, adult care facilities and health care facilities owned or operated by the applicant, by any controlling persons of the applicant, or by entities with which the members of the applicant's board are affiliated; the address of each such facility; and the dates of ownership or operation of each such facility,

(iii) in the event that any such community or facility specified in this subdivision while under the control or operation of the applicant, or any controlling person has been subjected to a limitation, withdrawal, or refusal to grant accreditation by a recognized accreditation organization, because of failure to comply with standards governing the conduct and operation of the facility, information that describes the nature of the violation, the agency or body enforcing the standard (including its name and address), the steps taken by the facility to remedy the violation, and an indication of whether any accreditation has since been restored, and

(iv) a statement as to whether the applicant or any of its officers, directors, partners, managers or a principal, parent or subsidiary corporation:

(A) has been convicted of a crime or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment if the criminal or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property,

(B) had a prior discharge in bankruptcy or was found insolvent in any court action,

(C) is or was subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license to operate a hospital as defined by section twenty-eight hundred one of this chapter, or a facility required to be licensed or certified by the department. The statement shall set forth the court or agency, date of conviction or judgment, the penalty imposed or damages assessed, or the date, nature and issuer of the order;

k. information which describes the populations to be served; and

l. any other information as may be required by regulations adopted pursuant to this article.

3. Nothing in this article shall be construed to enlarge, diminish or modify: a social services district's otherwise valid recovery under section three hundred sixty-nine of the social services law, nor medical assistance eligibility under title eleven of article five of the social services law nor applicable provisions of the estates, powers and trusts law. Except as otherwise provided in this article, the activities of continuing care retirement communities shall be subject to any other law governing such activities including but not limited to article twenty-eight of this chapter and article seven of the social services law and regulations promulgated thereunder; provided, however, that the provisions of paragraphs (d) and (e) of subdivision four of section twenty-eight hundred one-a and section twenty-eight hundred two of this chapter shall not apply, and provided that the provisions of paragraph

(a) of subdivision one and the provisions of subdivision two of section four hundred sixty-one-b of the social services law with respect to public need and the provisions of subdivision one of section four hundred sixty-one-c of the social services law shall not apply to residents who have been admitted in accordance with a contract provided that, upon admission to the adult care facility, such residents shall be given a notice which shall include, at a minimum, information regarding facility services, resident responsibilities, supplemental services, resident rights and protections and circumstances that warrant transfer. The number of residential health care facility beds available pursuant to subdivision five of this section, without proof of public need therefor, shall be reduced by the number of residential health care demonstration facility beds that are approved pursuant to this article.

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

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;

(ii) the superintendent of financial services as to 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. 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 any monthly care fee charged to a resident which may be increased or decreased subject to approval by the superintendent of financial services, 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, and provided further that the superintendent is notified of any such increase or decrease prior to its taking effect;

(iv) 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 aspects of the application relating to adult care facility beds, if any;

c. 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, 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 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.

5. Up to two thousand residential health care facility beds, as authorized herein, that may be approved as components of continuing care retirement communities shall not be considered by the department and the health systems agencies in the determination of public need for residential health care facility services; provided, however, that if the community seeking to construct such beds does not provide life care to all residents, it must adequately make the assurances required by subdivision two of section forty-six hundred twenty-four of this article.

6. If the approvals required by subdivision four of this section have been obtained, the commissioner shall either approve or reject the application. In order to approve the application, the commissioner shall have determined that:

a. the proposed community will meet a need and will fulfill the purposes of this article;

b. the applicant has satisfied the requirements of this article;

c. the applicant has demonstrated to the satisfaction of the council that the applicant and members of the board, officers, and controlling persons of the applicant, are of such character, experience, competence and standing in the community as to give reasonable assurance of their ability to conduct the affairs of the proposed continuing care retirement community in the best interest of the community and in the public interest, and to provide proper care to residents. In the case of an applicant that is controlled, the council must be satisfied that the controlling person has also acted in a manner that is consistent with

the public interest;

d. the applicant has otherwise demonstrated the capability to organize, market, manage, promote and operate the community and can be expected to meet its obligations in accordance with this article and in accordance with its contracts with residents;

e. the applicant has demonstrated that the total number of beds for the nursing facility component and the adult care facility bears a reasonable relation to the number of independent living units proposed for such community; and

f. with respect to communities which include a residential health care facility which does not require establishment approval under section twenty-eight hundred one-a of this chapter, the applicant has sufficient financial resources and sources of future revenues for the operation of the residential health care facility component.

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 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. The operator shall designate and make knowledgeable personnel available to prospective residents to answer questions about any information contained in the disclosure statement or contract. The disclosure statement and the contract shall each state on the cover or top of the first page in bold twelve point print the following "This matter involves a substantial financial investment and a legally binding contract. In evaluating the disclosure statement and the contract prior to any commitment, it is recommended that you consult with an attorney and financial advisor of your choice, if you so elect, who can review these documents with you."

9. The commissioner shall issue the certificate of authority to the applicant upon approval of the application.