§ 4604-a. 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 commissioner. Upon approving a proposed financing pursuant to this section, the commissioner shall issue a certificate of authorization to the applicant.

2. Prior to approving such financing, the 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 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 commissioner with notice of any monetary default or covenant default in connection with such financing and shall further notify the 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 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 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 commissioner may request, and shall receive, the technical assistance of any state agency or state public authority in performing its functions under this article.