



1 "Actuarial study" means an analysis that includes an  
2 actuary's opinion of whether the provider or applicant is in  
3 satisfactory actuarial balance in accordance with accepted  
4 actuarial standards of practice.

5 "Actuary" means an individual qualified to sign an  
6 actuarial opinion in accordance with the American Academy of  
7 Actuaries' qualification standards and who is a member in good  
8 standing with the American Academy of Actuaries.

9 "Advertisement" means any written, visual, or electronic  
10 information provided to potential residents, or their  
11 representatives, to induce those persons to subscribe to or  
12 enter into a nonbinding reservation agreement, binding  
13 reservation agreement, continuing care contract, or continuing  
14 care at home contract.

15 "Affiliate" means a person that, directly or indirectly,  
16 through one or more other persons, controls, is controlled by,  
17 or is under common control with a provider or applicant.

18 "Annual debt service" means the current year's capitalized  
19 interest cost plus interest expense and scheduled principal  
20 payments, excluding any balloon principal payment amounts and



1 any portion of the annual debt service that has been or will be  
2 funded by debt for the payment of debt service.

3 "Applicant" means any person with a pending application or  
4 other request for approval under this chapter.

5 "Audited financial statement" means a financial statement  
6 that has been prepared in accordance with generally accepted  
7 accounting principles and examined by an independent certified  
8 public accountant.

9 "Binding reservation agreement" means a binding contractual  
10 agreement between a provider and a depositor that requires the  
11 payment of a deposit to reserve the right to purchase continuing  
12 care, including the right to live in an independent living unit  
13 at a continuing care retirement community. "Binding reservation  
14 agreement" does not include purchase and sale agreement for an  
15 independent living unit.

16 "Cancel" means to terminate the force and effect of an  
17 agreement or contract.

18 "Commissioner" means the insurance commissioner of the  
19 State.



1 "Commissioner's website" means the website maintained by  
2 the insurance division of the department of commerce and  
3 consumer affairs.

4 "Continuing care" means the rendering to an individual  
5 other than an individual related by blood, marriage, or adoption  
6 to the person rendering the care, of housing in an independent  
7 living unit, together with related services, including access,  
8 when needed, to progressive levels of health care, including but  
9 not limited to an assisted living facility as defined in section  
10 323D-2 and nursing facility, as defined in section 346F-3,  
11 regardless of whether the health care is provided at the  
12 continuing care retirement community where the individual  
13 resides or another location, or through a contractual  
14 relationship with a third party, pursuant to a contract  
15 effective for the life of the individual or for a period longer  
16 than one year.

17 "Continuing care at home" means a program offered by a  
18 provider holding a permanent license under this chapter that  
19 provides continuing care to an individual who is not yet  
20 receiving housing, which may include programs that offer an



1 individual an opportunity to move to an independent living unit  
2 at a future date, if desired, according to the provider's  
3 established priority and admissions policies at the continuing  
4 care retirement community sponsoring the continuing care at home  
5 program.

6 "Continuing care retirement community" means a retirement  
7 community consisting of one or more structures where a provider  
8 renders continuing care to residents. "Continuing care  
9 retirement community" includes a distinct phase of development  
10 approved by the commissioner when a project is being developed  
11 in successive distinct phases over a period of time.

12 "Control" means the direct or indirect ability to direct or  
13 cause the direction of the management and policies of a person,  
14 including the right to designate or elect not less than a  
15 majority of the members of its board of directors or other  
16 governing board or body.

17 "Controlling person" means the person that controls an  
18 applicant or provider.

19 "Debt service coverage ratio" means a capital structure  
20 ratio that measures a provider's ability to pay annual debt



1 service with cash flow from net cash revenues and net entrance  
2 fee receipts; provided that the quotient is calculated by  
3 dividing:

- 4 (1) The sum of:
  - 5 (A) Total excess of revenues over or under expenses;
  - 6 (B) Interest expense;
  - 7 (C) Depreciation expense;
  - 8 (D) Amortization expense;
  - 9 (E) Other noncash operating losses or expenses; and
  - 10 (F) Net cash proceeds from entrance fees;
- 11 (2) Minus the sum of:
  - 12 (A) Entrance fee amortization;
  - 13 (B) Entrance fee refunds contractually past due; and
  - 14 (C) Other noncash operating gains or revenues;
- 15 (3) By annual debt service;

16 provided further that entrance fees received from the initial  
17 residents of independent living units at a continuing care  
18 retirement community that have been financed in whole or in part  
19 with the proceeds of indebtedness shall be excluded from the net



1 proceeds from entrance fees up to an amount equal to the  
2 aggregate of the principal amount of the indebtedness.

3 "Deposit" means any transfer of consideration made by a  
4 depositor to a provider to reserve an independent living unit at  
5 a continuing care retirement community.

6 "Entrance fee" means the sum of any initial, amortized, or  
7 deferred transfer of consideration made or to be made by, or on  
8 behalf of, an individual entering into a continuing care or  
9 continuing care at home contract.

10 "Escrow agent" means any person approved by the  
11 commissioner to hold entrance fees and deposits required to be  
12 placed in escrow under this chapter.

13 "Escrow agreement" means an agreement between a provider  
14 and an escrow agent by which entrance fees and deposits required  
15 to be held in escrow in accordance with this chapter are held by  
16 the escrow agent until release is authorized in accordance with  
17 this chapter.

18 "Hazardous condition" means a present, or reasonably  
19 anticipated future condition, in which:



- 1 (1) A provider is unlikely to be able to meet its  
2 continuing care obligations or to pay other  
3 obligations in the normal course of business; or  
4 (2) The continued operation of a provider or continuing  
5 care retirement community in its current condition is  
6 potentially harmful to depositors, residents,  
7 creditors, or the public.

8 "Housing" means a living unit set forth in a continuing  
9 care contract.

10 "Independent certified public accountant" means a certified  
11 public accountant or accounting firm in good standing with the  
12 American Institute of Certified Public Accountants and in all  
13 states they are licensed to practice in, who is not employed by,  
14 or otherwise affiliated with, an applicant or provider.

15 "Independent living unit" means a living unit in a  
16 continuing care retirement community for residents who are  
17 routinely able to carry out activities of daily living, with  
18 minimal or no assistance; provided that the accommodations may  
19 be in the form of apartments, flats, houses, cottages,  
20 condominium units, or rooms; provided further that receiving



1 home care or similar services, regardless of whether the  
2 services are provided by the provider or another person, does  
3 not preclude a living unit from being considered an independent  
4 living unit.

5 "Insolvent" means a provider is unable to pay its  
6 obligations as they come due in the normal course of business.

7 "Living unit" means an independent living unit, adult care  
8 home bed, nursing bed, or other area within a continuing care  
9 retirement community set aside for the exclusive use or control  
10 of one or more identified residents.

11 "Long-term care facility" has the same meaning as defined  
12 in section 349-21.

13 "Manager" means a person who administers the day-to-day  
14 business operations of a continuing care retirement community  
15 for a provider, subject to the policies, directives, and  
16 oversight of the provider.

17 "Net cash proceeds from entrance fees" means the total  
18 entrance fees received less entrance fees refunded, and less  
19 initial entrance fees received for new independent living units.



1 "Nonbinding reservation agreement" means an agreement  
2 between a provider and a depositor, which may be canceled by  
3 either party upon written notice at any time, confirming a  
4 person's desire to reserve an independent living unit at a  
5 continuing care retirement community on a nonbinding basis.

6 "Obligated group" means one or more persons that agree to  
7 be jointly and severally bound by a financing structure  
8 containing security provisions and covenants applicable to the  
9 group.

10 "Occupancy rate" means a ratio used to show the actual  
11 occupancy or utilization of living units, calculated by living  
12 unit type, at a continuing care retirement community for a given  
13 time period expressed as a per cent; provided that the occupancy  
14 rate is a rolling average that is equal to one hundred times the  
15 quotient obtained by dividing occupied living unit days by  
16 living unit days available. For the purposes of this  
17 definition, "living unit days available" means the maximum  
18 number of living unit days that would have been provided if all  
19 available living units were filled during the given time period.



1 The total shall equal the sum of all living units, minus any  
2 living units that are unavailable for occupancy, on each day for  
3 the given time period. For the purposes of this definition,  
4 "occupied living unit days" is the sum of each daily living unit  
5 census at the continuing care retirement community for a given  
6 time period, excluding any second person occupants. The total  
7 shall equal the sum of each daily census for the given time  
8 period.

9 "Periodic fee" means the fee charged to a resident on a  
10 monthly or other periodic basis for housing, services, or both.

11 "Person" means an individual, partnership, firm,  
12 association, corporation, joint-stock company, trust, any  
13 similar entity, or any combination of the foregoing acting in  
14 concert.

15 "Presale" means entering into an agreement or contract with  
16 a depositor for an independent living unit that is not yet  
17 constructed or available for occupancy.

18 "Primary market area" means the area from which a  
19 continuing care retirement community will likely draw the  
20 majority of its residents.



1 "Prospective financial statements" means financial  
2 forecasts or financial projections, including the summaries of  
3 significant assumptions and accounting policies prepared by an  
4 independent certified public accountant.

5 "Provider" means a person that offers or undertakes to  
6 provide continuing care under a continuing care or continuing  
7 care at home contract, or that represents as themselves as  
8 providing continuing care. "Provider" includes a person who has  
9 been issued a permit to accept deposits, a start-up certificate,  
10 or a preliminary certificate.

11 "Related party" means a person that has common interests  
12 with a provider because of ownership, control, or by contract,  
13 including affiliates, principal owners, management, or their  
14 affiliates and their management and members of the immediate  
15 family of the principal owners, management, or their affiliates  
16 and their management.

17 "Resident" means an individual who enters a continuing care  
18 or continuing care at home contract with a provider, or who is  
19 designated to be the individual to receive care under the  
20 contract.



1 "Satisfactory actuarial balance" means meeting all the  
2 required conditions, as of a specified valuation date, as set  
3 forth in accordance with accepted actuarial standards of  
4 practice.

5 § -2 **Continuing care; commissioner approval required.**

6 No person shall engage in the business of offering or providing  
7 continuing care without a certification, license, permit, or  
8 other approval from the commissioner as provided in this  
9 chapter. Engaging in the business of offering or providing  
10 continuing care includes:

- 11 (1) Accepting any deposit or any other payment that is  
12 related to continuing care;
- 13 (2) Entering into any nonbinding reservation agreement,  
14 binding reservation agreement, continuing care  
15 contract, or continuing care at home contract;
- 16 (3) Commencing construction of a prospective continuing  
17 care retirement community;
- 18 (4) Converting an existing building or buildings to a  
19 continuing care retirement community;



- 1           (5) Executing new nonbinding reservation agreements,  
2           binding reservation agreements, continuing care  
3           contracts, or continuing care at home contracts after  
4           a permit, certificate, or license issued pursuant to  
5           this chapter has been inactivated, surrendered, or  
6           forfeited;
- 7           (6) Assuming responsibility for continuing care and  
8           continuing care at home contracts; or
- 9           (7) Advertising or marketing to the public any product  
10          similar to continuing care through the use of such  
11          terms as "life care," "life plan," "continuing care,"  
12          or "guaranteed care for life," or similar terms,  
13          words, or phrases.

14          §   -3 **Dividends and distributions.** No dividend or other  
15          distribution of equity or net assets shall be paid by any  
16          provider after the commissioner has determined that the provider  
17          is in a hazardous condition or has been determined to not be in  
18          satisfactory actuarial balance in an actuarial study filed with  
19          the commissioner pursuant to section       -93, or when the payment  
20          would have the effect of creating a hazardous condition in the



1 provider or cause the provider to not be in satisfactory  
2 actuarial balance.

3       §   **-4 Leasing real property.** (a) An applicant or  
4 provider who intends to collect or does collect entrance fees  
5 shall not lease any land or other real property from another  
6 person if the land or other real property is to be used as a  
7 material part of a continuing care retirement community operated  
8 by the applicant or provider without first obtaining approval  
9 from the commissioner.

10       (b) When considering whether to allow an applicant or  
11 provider to lease any of the real property of a continuing care  
12 retirement community under this section, the commissioner shall  
13 consider all relevant factors, including the following:

14       (1) The terms of the proposed lease, including the  
15             proposed length of the lease and any proposed purchase  
16             options;

17       (2) The owner of the real property and the owner's  
18             relationship to the applicant or provider; and

19       (3) The distance from any existing real property owned by  
20             the applicant or provider.



1           §   **-5 Electronic filings and submissions; required.**

2 Except when required by the commissioner to submit a hard copy,  
3 all applicants and providers shall submit all filings required  
4 by this chapter electronically, in a form and manner prescribed  
5 by the commissioner and in compliance with chapter 489E.

6           §   **-6 Waiver or modification.** The commissioner may waive  
7 or modify any provision of this chapter if the commissioner  
8 determines a waiver or modification is justified based on any of  
9 the following:

10           (1) A state of emergency or disaster being proclaimed in  
11               the State or for an area within the State under  
12               section 127A-14 or whenever the President of the  
13               United States has issued a major disaster declaration  
14               for the State or for an area within the State under  
15               the Stafford Act, title 42 United States Code section  
16               5121 et seq.; or

17           (2) An incident beyond a provider's reasonable control,  
18               including an act of God, insurrection, strike, fire,  
19               pandemic, epidemic, power outage, or systemic  
20               technological failure that substantially affects the



1           daily business operations of a provider or a  
2           continuing care retirement community.

3           §   **-7 Confidential treatment.** (a) All of the following  
4 shall be confidential and privileged, shall not be considered a  
5 public record under chapter 92F, shall not be subject to  
6 subpoena, and shall not be subject to discovery or admissible in  
7 evidence in any private civil action:

- 8           (1) Any third-party management contract or proposed  
9           management contract provided to the commissioner  
10           pursuant to section   -21(a)(3) or section   -  
11           112(a);
- 12           (2) Any lease agreement or proposed lease agreement  
13           provided to the commissioner pursuant to section   -4  
14           or section   -21(a)(4);
- 15           (3) Any request for approval provided to the commissioner  
16           pursuant to section   -110(d) or section   -111(a);
- 17           (4) The actuarial study, other than the statement of  
18           actuarial opinion, provided to the commissioner  
19           pursuant to section   -22(a)(3),   -31(b)(3),   -81  
20           (a)(4), or   -93;



- 1 (5) Any market study provided to the commissioner pursuant  
2 to section -21(a)(9) or -81(a)(5);
- 3 (6) Any feasibility study provided to the commissioner  
4 pursuant to section -22(a)(2) or -31(b)(2);
- 5 (7) Documents, materials, or other information in the  
6 possession or control of the commissioner that are  
7 obtained by or disclosed to the commissioner or any  
8 other person during an investigation or examination  
9 made pursuant to section -134 or -173; and
- 10 (8) All working papers, information, documents, and copies  
11 of those materials produced by, obtained by, or  
12 disclosed to the commissioner in connection with the  
13 financial analysis of a provider by the commissioner.
- 14 (b) Notwithstanding subsection (a), the commissioner may  
15 use these documents, materials, or other information in the  
16 furtherance of any regulatory or legal action brought as a part  
17 of the commissioner's official duties. The commissioner shall  
18 not otherwise make these documents, materials, or other  
19 information public without the prior written consent of the  
20 provider to which it pertains unless the commissioner, after



1 giving the provider and its related parties who would be  
2 affected thereby notice and opportunity to be heard, determines  
3 that the interest of residents or the public will be served by  
4 their publication, in which event the commissioner may publish  
5 all or any part of the information in a manner deemed  
6 appropriate by the commissioner.

7 (c) Neither the commissioner nor any person who received  
8 any documents, materials, or other information while acting  
9 under the authority of the commissioner pursuant to this chapter  
10 or with whom any documents, materials, or other information are  
11 shared pursuant to this chapter shall be authorized or required  
12 to testify in any private civil action concerning any  
13 confidential documents, materials, or information subject to  
14 subsection (a).

15 (d) Any document, material, or other information that is  
16 shared with the commissioner that is not covered under  
17 subsection (a) that an applicant, provider, or other person  
18 believes is confidential or a trade secret should be marked as  
19 confidential or as a trade secret before submitting to the  
20 commissioner. Any document, material, or other information that



1 is not marked as confidential is not eligible for confidential  
2 treatment pursuant chapter 92F.

3 (e) To assist in the performance of the duties imposed by  
4 this chapter, the commissioner may:

5 (1) Share documents, materials, or other information,  
6 including the confidential and privileged documents,  
7 materials, or information subject to subsection (a) or  
8 (d), with other state, federal, and international  
9 regulatory agencies, and with state, federal, and  
10 international law enforcement authorities; provided  
11 that the recipient agrees in writing to maintain the  
12 confidentiality and privileged status of the document,  
13 material, or other information and has verified in  
14 writing the legal authority to maintain  
15 confidentiality; and

16 (2) Receive documents, materials, or information,  
17 including otherwise confidential and privileged  
18 documents, materials, or information from regulatory  
19 and law enforcement officials of other foreign or  
20 domestic jurisdictions, and shall maintain as



1 confidential or privileged any document, material, or  
2 information received with notice or the understanding  
3 that it is confidential or privileged under the laws  
4 of the jurisdiction that is the source of the  
5 document, material, or information.

6 (f) The sharing of information by the commissioner  
7 pursuant to this section shall not constitute a delegation of  
8 regulatory authority or rulemaking, and the commissioner shall  
9 be solely responsible for the administration, execution, and  
10 enforcement of the provisions of this chapter.

11 (g) No waiver of any applicable privilege or claim of  
12 confidentiality in the documents, materials, or information  
13 shall occur as a result of disclosure to the commissioner under  
14 this section or as a result of sharing as authorized in  
15 subsection (e).

16 **§ -8 Advertisement in conflict with disclosures and**  
17 **contracts.** A provider shall not engage in any type of  
18 advertisement for a continuing care retirement community if the  
19 advertisement contains a statement or representation which  
20 materially conflicts with the disclosures required under this



1 chapter or materially conflicts with any continuing care or  
2 continuing care at home contract offered by the provider.

3 § -9 Rules. The commissioner may adopt rules pursuant  
4 to chapter 91 to necessary for the purposes of this chapter.

5 **PART II. APPROVAL, CERTIFICATION, LICENSURE, AND PERMITTING**  
6 **PROCESS**

7 § -20 Permit to accept deposits. (a) No person shall  
8 market a proposed continuing care retirement community without a  
9 permit from the commissioner. A person may apply for a permit  
10 by paying an application fee of \$200 and filing an application  
11 on a form prescribed by the commissioner. The application form  
12 shall include:

- 13 (1) The name, business address, and telephone number of  
14 the applicant;
- 15 (2) The name and business address of the applicant's  
16 controlling person, if control of the applicant does  
17 not reside with the applicant;
- 18 (3) A proposed nonbinding reservation agreement;
- 19 (4) A proposed escrow agreement that meets the  
20 requirements of section -41; and



- 1           (5) A description of the proposed continuing care  
2           retirement community that shall include:
- 3           (A) The location of the proposed continuing care  
4           retirement community;
- 5           (B) The types of living units to be offered;
- 6           (C) The types of continuing care contracts to be  
7           offered;
- 8           (D) A description of the services that will be  
9           provided to residents, including an indication if  
10          any services will be provided by any related  
11          parties or third parties; and
- 12          (E) A description of the applicant's corporate  
13          structure and experience in developing or  
14          operating continuing care retirement communities,  
15          including the experience of any related party of  
16          the applicant.
- 17          (b) The commissioner shall comply with the review schedule  
18          in section -24 in response to an application for a permit to  
19          accept deposits.



- 1 (c) The commissioner shall approve an application for a  
2 permit to accept deposits if the following requirements are met:
- 3 (1) The application complies with this section;  
4 (2) None of the grounds for denial listed in section -  
5 131 apply to the applicant;  
6 (3) The proposed escrow agreement meets the requirements  
7 of section -41; and  
8 (4) The proposed escrow agent and depository are  
9 acceptable in accordance with section -40.
- 10 (d) After the issuance of a permit to accept deposits, the  
11 applicant may:
- 12 (1) Disseminate materials describing the intent to develop  
13 a continuing care retirement community;  
14 (2) Enter into nonbinding reservation agreements; and  
15 (3) Collect deposits in an amount not to exceed \$5,000;  
16 provided that all deposits collected shall be placed  
17 in escrow and shall only be released in accordance  
18 with part IV of this chapter.



1 (e) After the issuance of a permit to accept deposits, the  
2 commissioner shall require the provider to file periodic status  
3 reports in a form prescribed by the commissioner.

4 § -21 **Start up certificate.** (a) A person may apply for  
5 a start-up certificate by paying an application fee of \$2,000  
6 and submitting the following to the commissioner for review:

7 (1) A statement signed by the applicant, under penalty of  
8 perjury, certifying that to the best of the  
9 applicant's knowledge and belief, the items submitted  
10 in the application are correct; provided that if the  
11 applicant is a corporation, the chief executive  
12 officer or other authorized individual shall sign the  
13 statement; provided further that if there are multiple  
14 applicants, these requirements shall apply to each  
15 applicant;

16 (2) A statement disclosing any revocation or other  
17 disciplinary action taken, or in the process of being  
18 taken, against a license, permit, or certificate held  
19 or previously held by the applicant, any current or



- 1 former related party, or any person included or to be  
2 included in a current or proposed obligated group;
- 3 (3) If the applicant intends to employ a third-party  
4 management company to manage the continuing care  
5 retirement community, a copy of the management  
6 contract or proposed management contract, if  
7 available, along with a narrative describing the  
8 proposed third-party management company's experience  
9 managing continuing care retirement communities;
- 10 (4) If the applicant intends to lease any land or other  
11 real property to be used as part or all of the  
12 proposed continuing care retirement community, the  
13 name of the person from whom the land or other real  
14 property will be leased along with a copy of the lease  
15 agreement, or proposed lease agreement, if available,  
16 or a statement describing the applicant's intentions,  
17 including the intended length of the lease, if a lease  
18 agreement or proposed lease agreement is not  
19 available; provided that if the applicant intends to  
20 lease any of the real property of the continuing care



1 retirement community and to collect entrance fees,  
2 commissioner approval shall be received pursuant to  
3 section -4;

4 (5) If the applicant is not the owner of the proposed  
5 site, a statement identifying the current owner and  
6 any plans the applicant has for acquiring the proposed  
7 site, including details of any purchase option and  
8 requirements for a purchase option deposit. If a  
9 purchase option requires a purchase option deposit,  
10 the purchase option deposit shall be placed in escrow  
11 or secured in a manner acceptable to the commissioner;

12 (6) A list of all continuing care retirement communities  
13 currently or previously owned, operated, managed, or  
14 developed by the applicant or any related party of the  
15 applicant. The list shall:

16 (A) Furnish the name, address, city, and state of  
17 each continuing care retirement community listed,  
18 and explain the existing or past relationship to  
19 the applicant; and



- 1 (B) Specify the current status of each continuing
- 2 care retirement community listed and include any
- 3 administrative actions or financial problems that
- 4 currently exist, or have existed, within three
- 5 years after any relationship was terminated;
- 6 (7) A disclosure statement that meets the requirements of
- 7 section -61;
- 8 (8) If the applicant intends to enter into binding
- 9 reservation agreements, a copy of the binding
- 10 reservation agreement that the applicant intends to
- 11 use;
- 12 (9) A market study prepared by a person experienced in the
- 13 preparation of continuing care retirement community
- 14 market studies;
- 15 (10) Any other data, financial statements, and pertinent
- 16 information as the commissioner may reasonably require
- 17 with respect to the applicant, the applicant's
- 18 controlling person, or the proposed continuing care
- 19 retirement community to assist in determining the
- 20 market and financial viability of the proposed



1 continuing care retirement community and the  
2 competency, experience, and integrity of the  
3 applicant's and, if applicable, the applicant's  
4 controlling person's, governing body, officers, and  
5 management.

6 (b) The commissioner shall comply with the review schedule  
7 in section -24 in response to an application for a start-up  
8 certificate.

9 (c) The commissioner shall approve an application for a  
10 start-up certificate if the following requirements are met:

- 11 (1) The application complies with this section;
- 12 (2) None of the grounds for denial listed in section -  
13 131 apply to the applicant;
- 14 (3) The disclosure statement meets the requirements of  
15 section -61;
- 16 (4) A market for the proposed continuing care retirement  
17 community appears to exist and the continuing care  
18 retirement community appears to be financially viable,  
19 as evidenced by the market study and the five-year



- 1 prospective financial statements included in the  
2 applicant's disclosure statement; and
- 3 (5) The applicant's and, if applicable, the applicant's  
4 controlling person's, governing body, officers, and  
5 management are, in the commissioner's opinion,  
6 competent, experienced, and of good integrity.
- 7 (d) After issuing a start-up certificate, the commissioner  
8 shall:
- 9 (1) Require the provider to submit periodic sales,  
10 development, and unaudited financial statements in a  
11 form prescribed by the commissioner; and
- 12 (2) Post the disclosure statement of the continuing care  
13 retirement community on the commissioner's website.
- 14 (e) After receiving a start-up certificate from the  
15 commissioner, the provider may:
- 16 (1) Enter into binding reservation agreements and  
17 continuing care contracts;
- 18 (2) Accept entrance fees and deposits greater than \$5,000;  
19 provided that all or any part of an entrance fee or  
20 deposit collected shall be placed in escrow and shall



1           only be released in accordance with part IV of this  
2           chapter;

3           (3) Begin site preparation work; and

4           (4) Construct model independent living units for  
5           marketing.

6           § **-22 Preliminary certificate.** (a) A person may apply  
7 for a preliminary certificate by submitting to the commissioner  
8 for review:

9           (1) A statement signed by the applicant, under penalty of  
10           perjury, certifying that to the best of the  
11           applicant's knowledge and belief, the items submitted  
12           in the application are correct; provided that if the  
13           applicant is a corporation, the chief executive  
14           officer or other authorized individual shall sign the  
15           statement; provided further that if there are multiple  
16           applicants, these requirements shall apply to each  
17           applicant;

18           (2) A feasibility study, prepared by an independent person  
19           experienced in preparing feasibility studies for  
20           continuing care retirement communities, with



1 financial, marketing, and actuarial assumptions that  
2 projects the market and financial viability of the  
3 proposed continuing care retirement community;  
4 provided that the study shall include:

5 (A) A description of the proposed continuing care  
6 retirement community, its service package, the  
7 number and type of living units, fee structure,  
8 and anticipated opening date, including a  
9 detailed schedule of projected periodic fees and  
10 a description of how the projected periodic fees  
11 were computed;

12 (B) A description of any proposed construction plans,  
13 construction financing, and permanent financing  
14 for the proposed continuing care retirement  
15 community;

16 (C) A description of the anticipated source, cost,  
17 terms, and uses of all funds to be used in the  
18 real property acquisition, construction,  
19 marketing, and operation for the proposed



- 1 continuing care retirement community, including  
2 the following:
- 3 (i) A description of all debt to be incurred by  
4 the applicant, including the source,  
5 anticipated terms, and costs of financing;
  - 6 (ii) A description of the source and amount of  
7 equity to be contributed by the applicant or  
8 any other person;
  - 9 (iii) A description of the source and amount of  
10 all other funds, including entrance fees,  
11 that will be necessary to complete and  
12 operate the proposed continuing care  
13 retirement community;
  - 14 (iv) A statement itemizing all estimated project  
15 costs, including the real property costs,  
16 the cost of acquiring or designing and  
17 constructing the proposed continuing care  
18 retirement community, and all similar costs  
19 that the applicant expects to incur prior to  
20 the commencement of operation; provided that



- 1           this itemization shall identify all costs  
2           related to the proposed continuing care  
3           retirement community, including financing  
4           expenses, resident acquisition costs,  
5           marketing costs, and furniture and  
6           equipment;
- 7           (v) An estimate of any reserves required by  
8           financing and the operating reserve required  
9           pursuant to part XI of this chapter; and
- 10          (vi) An estimate of the amount of funds, if any,  
11          that will be necessary to fund start-up  
12          losses and to otherwise provide additional  
13          financial resources in an amount sufficient  
14          to ensure full performance by the applicant  
15          of its continuing care contract obligations;
- 16          (D) An analysis of the potential market for the  
17          applicant's proposed continuing care retirement  
18          community, addressing the following:
- 19               (i) The population, household growth, age  
20               distribution, household income, household



- 1 tenure, and resale housing values within the  
2 primary market area;
- 3 (ii) A demand analysis of the range of likely  
4 target consumers within the primary market  
5 area as well as estimated penetration rates;
- 6 (iii) An economic analysis of current market  
7 conditions and trends that can impact the  
8 feasibility of the proposed continuing care  
9 retirement community, positively or  
10 negatively, including real estate, income,  
11 employment, and the general economic outlook  
12 for the primary market area and surrounding  
13 areas;
- 14 (iv) An analysis of the project location and  
15 immediate area in relationship to key  
16 variables, including accessibility,  
17 employment, and proximity to health care,  
18 retail, and other services;



- 1 (v) The types of services and amenities desired  
2 and the forms of ownership or interest in  
3 real property preferred; and  
4 (vi) Existing and planned competition in the  
5 primary market area;  
6 (E) A description of the sales and marketing plan,  
7 including:  
8 (i) Marketing projections, anticipated sales,  
9 and cancellation rates;  
10 (ii) Month-by-month projections of independent  
11 living unit sales through stabilized  
12 occupancy;  
13 (iii) A description of the marketing methods,  
14 staffing, and advertising media to be used  
15 by the applicant; and  
16 (iv) An estimate of the total entrance fees to be  
17 received prior to opening the proposed  
18 continuing care retirement community;  
19 (F) Projected move-in rates and resident profiles,  
20 including couple mix by living unit type, age



- 1 distribution, adult care home bed and nursing bed  
2 utilization, and living unit turnover or resale  
3 rates;
- 4 (G) A description or analysis of costs and revenues  
5 throughout the development and resident fill-up  
6 period of the proposed continuing care retirement  
7 community;
- 8 (H) Prospective financial statements for the period  
9 commencing on the first day of the applicant's  
10 current fiscal year through at least the fifth  
11 year of operation which shall be prepared in  
12 accordance with standards adopted by the American  
13 Institute of Certified Public Accountants;
- 14 (I) Any other factors that, in the opinion of the  
15 preparer, will affect the feasibility of the  
16 proposed continuing care retirement community;
- 17 (J) The name of the person who prepared the  
18 feasibility study and the experience of the  
19 person in preparing similar studies or otherwise  
20 consulting in the field of continuing care; and



- 1           (K) An evaluation and opinion by the person who  
2                   prepared the feasibility study of the underlying  
3                   assumptions used as a basis for the study,  
4                   including a statement on whether the assumptions  
5                   are reasonable and proper;
- 6           (3) An actuarial study prepared in accordance with  
7                   accepted actuarial standards of practice which  
8                   estimates the earliest year that the proposed  
9                   continuing care retirement community is projected to  
10                  be in satisfactory actuarial balance; provided that  
11                  applicants who do not or will not collect entrance  
12                  fees or some other prepayment of costs are exempt from  
13                  this requirement and shall only be required to submit  
14                  an actuarial projection of future population flows and  
15                  adult care home bed and nursing bed needs; provided  
16                  further that an actuarial projection of future  
17                  population flows and adult care home bed and nursing  
18                  bed needs shall use:
- 19           (A) Appropriate mortality, morbidity, withdrawal,  
20                  occupancy, and other demographic assumptions; and



- 1 (B) A projection period that extends to a point at
- 2 which, in the actuary's professional judgment,
- 3 the use of a longer period would not materially
- 4 affect the results and conclusions;
- 5 (4) An updated disclosure statement that meets the
- 6 requirements of section -61;
- 7 (5) At least one of the following:
- 8 (A) Confirmation of signed binding reservation
- 9 agreements or continuing care contracts for at
- 10 least fifty per cent of the new independent
- 11 living units, reserved by a deposit equal to at
- 12 least ten per cent of the entrance fee;
- 13 (B) Confirmation of signed binding reservation
- 14 agreements or continuing care contracts for at
- 15 least fifty per cent of the new independent
- 16 living units, reserved by a nonrefundable deposit
- 17 equal to the periodic fee for at least two months
- 18 for proposed continuing care retirement
- 19 communities that have no entrance fee; or



- 1           (C) Confirmation of \$100,000 placed on deposit with  
2           the commissioner, if the applicant does not  
3           collect presale entrance fees or deposits in an  
4           amount equal to at least ten per cent of the  
5           entrance fee or does not collect presale entrance  
6           fees or deposits and does not collect  
7           nonrefundable deposits equal to the periodic fee  
8           of at least two months; provided that this  
9           deposit is subject to the following requirements:
- 10           (i) The deposit shall only be returned to the  
11           applicant upon issuance of a permanent  
12           license;
- 13           (ii) The deposit shall be made in a form and  
14           amount determined by the commissioner; and
- 15           (iii) The deposit shall automatically be forfeited  
16           if the applicant does not obtain a permanent  
17           license within five years after the issuance  
18           of a preliminary certificate; provided  
19           further that forfeited deposits shall be  
20           remitted to the general fund; and



1 (6) If applicable, confirmation that commitments have been  
2 secured for construction financing and long-term  
3 financing or that a documented plan acceptable to the  
4 commissioner has been adopted by the applicant for  
5 long-term financing.

6 (b) The commissioner shall comply with the review schedule  
7 in section -24 in response to an application for a  
8 preliminary certificate.

9 (c) The commissioner shall approve an application for a  
10 preliminary certificate if the following requirements are met:

- 11 (1) The application complies with this section;
- 12 (2) None of the grounds for denial listed in section -  
13 131 apply to the applicant;
- 14 (3) The feasibility study meets the following  
15 requirements:
  - 16 (A) Includes in the prospective financial statements  
17 all obligations and liabilities to be undertaken  
18 by the applicant pursuant to the terms of the  
19 proposed continuing care contracts;



- 1 (B) Demonstrates that the anticipated sources of
- 2 funds to finance and operate the proposed
- 3 continuing care retirement community are equal to
- 4 or greater than the anticipated uses of funds to
- 5 construct or acquire the proposed continuing care
- 6 retirement community and fund start-up losses and
- 7 provide sufficient resources to ensure full
- 8 performance of the applicant's continuing care
- 9 contract obligations; and
- 10 (C) Demonstrates that the continuing care retirement
- 11 community is financially feasible;
- 12 (4) A market for the continuing care retirement community
- 13 appears to exist, based on data that meets the
- 14 following requirements:
- 15 (A) Is specific to the proposed continuing care
- 16 retirement community;
- 17 (B) Considers existing and proposed competition in
- 18 the primary market area;
- 19 (C) Demonstrates the existence of a market for the
- 20 age, marital status, number, population trends,



- 1 net worth, home values, and income of the  
2 potential residents; and
- 3 (D) Demonstrates that the rate of penetration in the  
4 proposed market area is within acceptable  
5 industry ranges;
- 6 (5) The actuarial study, if applicable, projects that the  
7 proposed continuing care retirement community will be  
8 in satisfactory actuarial balance within a reasonable  
9 period of time after achieving stabilized occupancy,  
10 as determined by the commissioner, or if no actuarial  
11 study is required, the actuarial projection of future  
12 population flows demonstrates a sufficient number of  
13 adult care home beds and nursing beds to meet the  
14 future needs of residents and the future contractual  
15 obligations of the applicant, as determined by the  
16 commissioner;
- 17 (6) The applicant has met one of the requirements in  
18 paragraph (5);
- 19 (7) If applicable, the applicant has secured commitments  
20 for construction financing and long-term financing or



1           that a documented plan acceptable to the commissioner  
2           has been adopted by the applicant for long-term  
3           financing; and

4           (8) The applicant demonstrates an ability to comply with  
5           this chapter and to provide continuing care as  
6           proposed and meet all financial obligations related to  
7           its operations.

8           (d) After issuing a preliminary certificate, the  
9 commissioner shall:

10           (1) Require the provider to submit periodic sales,  
11           development, and unaudited financial statements in a  
12           form prescribed by the commissioner; and

13           (2) Post the disclosure statement of the continuing care  
14           retirement community on the commissioner's website.

15           (e) After receiving a preliminary certificate from the  
16 commissioner, the provider may:

17           (1) Construct a continuing care retirement community; and

18           (2) Convert an existing structure or structures into a  
19           continuing care retirement community.



1           §   -23 **Permanent license.** (a) A person may apply for a  
2 permanent license by submitting the following to the  
3 commissioner for review:

4           (1) A statement signed by the applicant, under penalty of  
5 perjury, certifying that to the best of the  
6 applicant's knowledge and belief, the items submitted  
7 in the application are correct; provided that if the  
8 applicant is a corporation, the chief executive  
9 officer or other authorized individual shall sign the  
10 statement; provided further that if there are multiple  
11 applicants, these requirements shall apply to each  
12 applicant;

13           (2) An updated disclosure statement that meets the  
14 requirements of section       -61;

15           (3) Confirmation that the applicant has established a plan  
16 to have health care available to residents promised in  
17 continuing care contracts upon opening, either by the  
18 applicant directly, or through contractual agreements;

19           (4) At least one of the following:



- 1           (A) Confirmation of signed binding reservation
- 2                    agreements or continuing care contracts for at
- 3                    least seventy per cent of the new independent
- 4                    living units, reserved by a deposit equal to at
- 5                    least ten per cent of the entrance fee;
- 6           (B) Confirmation of signed binding reservation
- 7                    agreements or continuing care contracts for at
- 8                    least seventy per cent of the new independent
- 9                    living units, reserved by a nonrefundable deposit
- 10                   equal to the periodic fee for at least two months
- 11                   for proposed continuing care retirement
- 12                   communities that have no entrance fee; or
- 13           (C) Confirmation of the \$100,000 deposit required
- 14                   pursuant to section       -22(a)(5)(C);
- 15       (5) Confirmation that the applicant has long-term
- 16                   financing in place, and if the applicant is leasing
- 17                   the land or other real property of the continuing care
- 18                   retirement community, confirmation that the lease is
- 19                   in place and, if applicable, that the lease has been



1 approved by the commissioner pursuant to section -  
2 2;

3 (6) Confirmation that the applicant is in compliance with  
4 all other state, federal, municipal, and county laws  
5 and regulations; provided that if the applicant is not  
6 in compliance, the applicant shall include a statement  
7 that describes the nature of the deficiency;

8 (7) A statement concerning any litigation, orders,  
9 judgments, or decrees which may involve or impact the  
10 applicant or proposed continuing care retirement  
11 community; and

12 (8) Evidence that the applicant has in place the operating  
13 reserve required by part XI of this chapter.

14 (b) The commissioner shall comply with the review schedule  
15 in section -24 in response to an application for a permanent  
16 license.

17 (c) The commissioner shall approve an application for a  
18 permanent license if the following requirements are met:

19 (1) The application complies with this section; and



1           (2) None of the grounds for denial listed in section -  
2                   131 apply to the applicant.

3           (d) After receiving a permanent license from the  
4 commissioner, the provider may:

5           (1) Open the continuing care retirement community; and  
6           (2) Provide continuing care.

7           (e) If the commissioner determines that the requirements  
8 of subsection (c) are not met, the commissioner may:

9           (1) Deny the application; or  
10           (2) Issue a restricted permanent license with an  
11 explanation of:

12                   (A) The restrictions established by the commissioner  
13                           under subsection (f); and  
14                   (B) Conditions the provider shall satisfy to qualify  
15                           for a permanent license.

16           (f) After receiving a restricted permanent license from  
17 the commissioner, the provider may operate a continuing care  
18 retirement community under restrictions established by the  
19 commissioner until the commissioner issues a permanent license.  
20 When the commissioner issues a restricted permanent license, the



1 provider shall inform all depositors and residents within ten  
2 business days of all restrictions imposed by the restricted  
3 permanent license and all conditions that the provider shall  
4 satisfy to qualify for a permanent license.

5 (g) After issuing a permanent license or restricted  
6 permanent license, the commissioner shall:

7 (1) Require the provider to submit periodic occupancy  
8 reports and financial statements in a form prescribed  
9 by the commissioner; and

10 (2) Post the disclosure statement of the continuing care  
11 retirement community on the commissioner's website.

12 (h) A permanent license or restricted permanent license  
13 shall be valid for as long as the commissioner determines that  
14 the provider continues to meet the requirements of this chapter.

15 § -24 **Review schedule.** The commissioner shall comply  
16 with the following schedule in response to an application for a  
17 permit to accept deposits, a start-up certificate, a preliminary  
18 certificate, a permanent license, an expansion, a continuing  
19 care at home license, an expansion notification, and a request  
20 for approval pursuant to section -110, -111, and -112:



- 1           (1) Within five business days after receipt of an  
2           application, a notification, a request for approval,  
3           or of materials intended to supplement an incomplete  
4           application, notification, or request for approval,  
5           the commissioner shall acknowledge receipt in writing;
- 6           (2) Within ten business days after receipt of an  
7           application for a permit to accept deposits, permanent  
8           license, and an expansion notification, or of  
9           materials intended to supplement an incomplete  
10          application or expansion notification, and within  
11          thirty days after receipt of an application for a  
12          start-up certificate, a preliminary certificate, a  
13          continuing care at home license, and an expansion, or  
14          a request for approval, or of materials intended to  
15          supplement an incomplete application or request for  
16          approval, the commissioner shall determine if the  
17          application, notification, or request for approval is  
18          complete and inform the applicant in writing of the  
19          determination; provided that if the commissioner  
20          determines that the application, notification, or



1 request for approval is incomplete, the notice to the  
2 applicant shall specifically set forth and request any  
3 additional information the commissioner determines is  
4 necessary to complete the application, notification,  
5 or request for approval; and

6 (3) When the commissioner determines an application,  
7 notification, or request for approval is complete, the  
8 commissioner shall approve or deny the application,  
9 notification, or request for approval as follows:

10 (A) Within five business days for a permit to accept  
11 deposits and an expansion notification;

12 (B) Within thirty days for a start-up certificate,  
13 permanent license, continuing care at home  
14 license, expansion, and a request for approval;  
15 and

16 (C) Within forty-five days for a preliminary  
17 certificate.

18 § -25 **Expiration of a permit to accept deposits and**  
19 **start-up certificate.** (a) A permit to accept deposits and a



1 start-up certificate issued pursuant to this chapter shall  
2 expire thirty-six months after issuance.

3 (b) A provider issued a permit to accept deposits or a  
4 start-up certificate may request an extension of the permit or  
5 certificate. The request for extension shall be made in writing  
6 and include:

7 (1) The reasons why the provider has not applied for a  
8 start-up certificate or preliminary certificate, as  
9 applicable; and

10 (2) The estimated date the provider expects to file the  
11 start-up certificate application or the preliminary  
12 certificate application, as applicable.

13 (c) In response to a request for an extension, the  
14 commissioner shall, if the commissioner determines that:

15 (1) There is satisfactory cause for the delay, the  
16 commissioner shall extend the permit to accept  
17 deposits or a start-up certificate for up to one year  
18 and may, in the commissioner's discretion, require the  
19 provider to update information previously filed  
20 pursuant to section -20 or section -21 before



1 approving any extension. There shall not be a limit  
2 to the number of extensions that may be granted by the  
3 commissioner; or

4 (2) There is no satisfactory cause for the delay, the  
5 commissioner shall instruct the escrow agent to refund  
6 to depositors all deposits held in escrow, plus any  
7 interest that may be due under the terms of any  
8 nonbinding reservation agreement, binding reservation  
9 agreement, or continuing care contract.

10 (d) Within ten business days of the commissioner's denial  
11 of an extension, the provider shall notify each depositor of the  
12 commissioner's denial of the extension, of the expiration of the  
13 permit to accept deposits or a start-up certificate, and of any  
14 right to a refund of their deposits.

15 § -26 Denial of an application, notification, or other  
16 request for approval. (a) If the commissioner denies an  
17 application, notification, or any other request for approval  
18 pursuant to this chapter, the commissioner shall notify the  
19 applicant in writing of the denial. The notification shall  
20 state the grounds for the denial. To obtain a review of the



1 commissioner's denial, the applicant shall make written demand  
2 upon the commissioner within thirty days after service upon the  
3 applicant of notification of the denial. The review shall be  
4 completed without undue delay, and the applicant shall be  
5 notified promptly in writing as to the outcome of the review.  
6 If the applicant disagrees with the outcome of the review and  
7 seeks a hearing under chapter 91, the applicant shall make a  
8 written demand upon the commissioner for the hearing within  
9 thirty days after service upon the applicant of the notification  
10 of the outcome.

11 (b) If the commissioner denies an application,  
12 notification, or other request for approval pursuant to this  
13 chapter, no portion of the fee associated with the application,  
14 notification, or request for approval shall be refunded.

15 **PART III. EXPANSION**

16 **§ -30 Expansion notification.** (a) Before marketing and  
17 collecting deposits for a proposed expansion of a continuing  
18 care retirement community that is twenty per cent or more of  
19 existing independent living units, a provider shall:



- 1 (1) Notify and obtain written approval from the  
2 commissioner; and
- 3 (2) Notify all residents in writing of the provider's  
4 intent to expand the number of independent living  
5 units at the continuing care retirement community;  
6 provided that this notification shall include the  
7 description required by paragraph (b)(1).
- 8 (b) The expansion notification to the commissioner  
9 required by this section shall include:
- 10 (1) A description of the proposed expansion project,  
11 including the number of independent living units to be  
12 added;
- 13 (2) If the provider intends to enter into nonbinding  
14 reservation agreements, binding reservation  
15 agreements, or both, a copy of the proposed agreements  
16 that the provider intends to use;
- 17 (3) A proposed escrow agreement that meets the  
18 requirements of section -41; and
- 19 (4) An updated disclosure statement that meets the  
20 requirements of section -61.



1 (c) The commissioner shall comply with the review schedule  
2 in section -24 in response to an expansion notification.

3 (d) The commissioner shall approve the expansion  
4 notification if the following requirements are met:

5 (1) The expansion notification complies with this section;

6 (2) None of the grounds for denial listed in section -  
7 131 apply to the provider;

8 (3) The proposed escrow agreement meets the requirements  
9 of section -41; and

10 (4) The proposed escrow agent and depository are  
11 acceptable in accordance with section -40.

12 (e) After the commissioner approves the expansion  
13 notification, the provider shall submit periodic sales and  
14 development reports to the commissioner in a form prescribed by  
15 the commissioner.

16 (f) After the commissioner approves the expansion  
17 notification, the provider may:

18 (1) Disseminate materials, including advertisements,  
19 describing the intent to expand the number of



- 1 independent living units at the continuing care  
2 retirement community;
- 3 (2) Enter into nonbinding reservation agreements, binding  
4 reservation agreements, and continuing care contracts  
5 for the proposed independent living units; and
- 6 (3) Collect entrance fees and deposits for the proposed  
7 independent living units; provided that all deposits  
8 collected shall be placed in escrow and shall only be  
9 released in accordance with part IV of this chapter,  
10 unless otherwise exempted by the commissioner.

11 **§ -31 Expansion application.** (a) Before commencing  
12 construction of an expansion of a continuing care retirement  
13 community that is twenty per cent or more of existing  
14 independent living units, a provider shall:

- 15 (1) Receive commissioner approval of an expansion  
16 notification pursuant to section -30; and
- 17 (2) Apply to the commissioner for approval to commence  
18 construction.

19 (b) The application required by this section shall  
20 include:



- 1           (1) An application fee of \$1,000;
- 2           (2) A feasibility study, prepared by an independent person
- 3           experienced in preparing feasibility studies for
- 4           continuing care retirement communities, with
- 5           financial, marketing, and actuarial assumptions that
- 6           projects the market and financial viability of the
- 7           proposed expansion; provided that the study shall
- 8           include:
- 9           (A) A description of the applicant's proposed
- 10           expansion project, including the number of
- 11           independent living units being added, fee
- 12           structure, a description of how the projected
- 13           fees were computed, and the anticipated project
- 14           time line; and
- 15           (B) A description of the construction plans,
- 16           construction financing, and permanent financing
- 17           for the proposed expansion project, including:
- 18           (i) A description of all debt to be incurred by
- 19           the applicant, including the source,
- 20           anticipated terms, and costs of financing;



- 1           (ii) A description of the source and amount of
- 2                   any equity to be contributed by the
- 3                   applicant;
- 4           (iii) A description of the source and amount of
- 5                   all other funds, including entrance fees,
- 6                   that will be necessary to complete and
- 7                   operate the proposed expansion;
- 8           (iv) A statement itemizing all estimated project
- 9                   costs, including the real property costs,
- 10                  the cost of designing and constructing the
- 11                  proposed expansion, and all similar costs
- 12                  that the applicant expects to incur prior to
- 13                  the opening of the expansion; provided that
- 14                  this itemization shall identify all costs
- 15                  related to the proposed expansion, including
- 16                  financing expenses, resident acquisition
- 17                  costs, marketing costs, and furniture,
- 18                  fixtures, and equipment; and



- 1 (v) An estimate of any reserves required by
- 2 financing and the operating reserve required
- 3 pursuant to part XI of this chapter;
- 4 (C) An analysis of the potential market for the
- 5 proposed expansion, addressing:
- 6 (i) The population, household growth, age
- 7 distribution, household income, household
- 8 tenure, and resale housing values within the
- 9 primary market area;
- 10 (ii) A demand analysis of the range of likely
- 11 target consumers within the primary market
- 12 area as well as estimated penetration rates;
- 13 (iii) An economic analysis of current market
- 14 conditions and trends that can impact the
- 15 feasibility of the proposed expansion,
- 16 positively or negatively, including real
- 17 estate, income, employment, and the general
- 18 economic outlook for the primary market area
- 19 and surrounding areas; and



- 1                   (iv) Existing and planned competition in the
- 2   primary market area;
- 3           (D) A description of the sales and marketing plan,
- 4                   including:
- 5                   (i) Marketing projections, anticipated sales,
- 6   and cancellation rates;
- 7                   (ii) Month-by-month projections of independent
- 8   living unit sales through stabilized
- 9   occupancy;
- 10                  (iii) A description of the marketing methods,
- 11   staffing, and advertising media to be used
- 12   by the applicant; and
- 13                  (iv) An estimate of the total entrance fees to be
- 14   received;
- 15           (E) Projected move-in rates and resident profiles,
- 16   adult care home bed and nursing bed utilization,
- 17   and living unit turnover or resale rates;
- 18           (F) A description or analysis of costs and revenues
- 19   throughout the development and resident fill-up
- 20   period of the proposed expansion;



- 1 (G) Five-year prospective financial statements of the  
2 applicant which shall be prepared in accordance  
3 with standards adopted by the American Institute  
4 of Certified Public Accountants;
- 5 (H) Any other factors that, in the opinion of the  
6 preparer, will affect the feasibility of the  
7 expansion;
- 8 (I) The name of the person who prepared the  
9 feasibility study and their experience in  
10 preparing similar studies or otherwise consulting  
11 in the field of continuing care; and
- 12 (J) An evaluation and opinion by the person who  
13 prepared the feasibility study of the underlying  
14 assumptions used as a basis for the study,  
15 including a statement whether the assumptions are  
16 reasonable and proper;
- 17 (3) An actuarial study prepared in accordance with  
18 accepted actuarial standards of practice which  
19 estimates when the continuing care retirement  
20 community is projected to be in satisfactory actuarial



1 balance once stabilized occupancy of the expansion is  
2 achieved; provided that applicants who do not collect  
3 entrance fees or some other type of up-front  
4 prepayment of costs are exempt from this requirement  
5 and shall only be required to submit an actuarial  
6 projection of future population flows and adult care  
7 home bed and nursing bed needs; provided further that  
8 an actuarial projection of future population flows and  
9 adult home care bed and nursing bed needs shall use  
10 appropriate mortality, morbidity, withdrawal,  
11 occupancy, and other demographic assumptions and a  
12 projection period that extends to a point at which, in  
13 the actuary's professional judgment, the use of a  
14 longer period would not materially affect the results  
15 and conclusions;

16 (4) An updated disclosure statement that meets the  
17 requirements of section -61;

18 (5) If applicable, confirmation that the applicant has  
19 secured commitments for construction financing and  
20 long-term financing or that a documented plan



1 acceptable to the commissioner has been adopted by the  
2 applicant for long-term financing;

3 (6) If the expansion includes any land or other real  
4 property that is to be leased, confirmation, if  
5 applicable, that the lease has been approved by the  
6 commissioner pursuant to section -4; and

7 (7) Any other data and pertinent information as the  
8 commissioner may reasonably require with respect to  
9 the applicant or the continuing care retirement  
10 community to determine the feasibility of the  
11 expansion.

12 (c) The commissioner shall comply with the review schedule  
13 in section -24 in response to an expansion application.

14 (d) The commissioner shall approve the expansion  
15 application if the following requirements are met:

16 (1) The expansion application complies with this section;

17 (2) None of the grounds for denial listed in section -  
18 131 apply to the applicant;

19 (3) The feasibility study meets the following  
20 requirements:



- 1 (A) Includes in the prospective financial statements  
2 all current obligations and liabilities of the  
3 applicant as well as those to be undertaken by  
4 the applicant;
- 5 (B) Demonstrates that the expansion is financially  
6 viable and will not have an unreasonably adverse  
7 effect on the financial ability of the applicant  
8 to furnish continuing care; and
- 9 (C) Demonstrates the existence of a market for the  
10 proposed expansion based on reliable data, which  
11 meets the following requirements:
- 12 (i) Is specific to the continuing care  
13 retirement community;
- 14 (ii) Considers existing and proposed competition  
15 in the primary market area; and
- 16 (iii) Demonstrates that the rate of penetration in  
17 the proposed market area is within  
18 acceptable industry ranges;
- 19 (4) The applicant demonstrates the ability to provide  
20 continuing care and meet all financial and contractual



- 1 obligations related to its operations, including the  
2 financial requirements of this chapter;
- 3 (5) The applicant, if applicable, has secured commitments  
4 for construction financing and long-term financing or  
5 that a documented plan acceptable to the commissioner  
6 has been adopted by the applicant for long-term  
7 financing; and
- 8 (6) The actuarial study, if applicable, projects that the  
9 continuing care retirement community will be in  
10 satisfactory actuarial balance within a reasonable  
11 period of time once stabilized occupancy of the  
12 expansion is achieved, or if no actuarial study is  
13 required, the actuarial projection of future  
14 population flows demonstrates a sufficient number of  
15 adult care home beds and nursing beds to meet the  
16 needs of residents and the contractual obligations of  
17 the applicant.
- 18 (e) After the commissioner approves the expansion  
19 application, the provider shall submit periodic sales and



1 development reports to the commissioner in a form prescribed by  
2 the commissioner to monitor the expansion project.

3 (f) After the commissioner approves the expansion  
4 application, the provider may commence construction of the new  
5 independent living units at the continuing care retirement  
6 community as proposed and, upon completion of construction and  
7 the satisfaction of all other legal requirements, open the  
8 expansion and provide continuing care to the residents of the  
9 new independent living units.

10 § -32 **Expansion entrance fees and deposits.** All  
11 entrance fees and deposits collected for independent living  
12 units in an expansion requiring commissioner approval under this  
13 part shall be placed in an escrow account in accordance with  
14 part IV of this chapter unless otherwise exempted by the  
15 commissioner.

16 **PART IV. ESCROW ACCOUNT**

17 § -40 **Escrow account required.** All entrance fees and  
18 deposits, when required by this chapter, shall be deposited by  
19 the provider in an escrow account and shall be maintained in a  
20 segregated account without any commingling with other funds,



1 including any funds or accounts owned by the provider. The  
2 escrow agent and all terms governing an escrow account shall be  
3 approved in advance by the commissioner.

4       §   **-41 Escrow agreement requirements.** The escrow  
5 agreement between an applicant or a provider and the escrow  
6 agent shall be in writing and include, in addition to any other  
7 provisions required by law, the following:

- 8       (1) A provision requiring that all funds received shall be  
9           placed into the escrow account in accordance with  
10          section     -43;
- 11       (2) A provision for investment of escrow account funds in  
12          a manner consistent with section     -44;
- 13       (3) A provision regarding the payment of interest earned  
14          on the funds held in the escrow account in the manner  
15          specified in section     -45;
- 16       (4) A provision for refunds to depositors in the manner  
17          specified by section     -47;
- 18       (5) A provision that any refund or release of escrow  
19          account funds be performed in the manner specified in  
20          section     -47 and     -48, including a statement as to



- 1           whom payment of interest earned on the funds will be  
2           made;
- 3           (6) A statement that the purpose of the escrow agreement  
4           is to protect residents and prospective residents;
- 5           (7) The amount of the escrow agent fee;
- 6           (8) A provision that funds deposited shall not be subject  
7           to any liens or charges by the escrow agent;
- 8           (9) A provision requiring the escrow agent to furnish the  
9           provider with a monthly statement indicating the  
10          amount of any disbursements from or deposits to the  
11          escrow account and the condition of the account during  
12          the monthly period covered by the statement;
- 13          (10) A provision requiring the escrow agent to furnish to  
14          the commissioner, upon the request of the  
15          commissioner, periodic reports, including the monthly  
16          statement required pursuant to paragraph (9),  
17          certifying the amount of funds held on deposit;
- 18          (11) A provision requiring the escrow agent to furnish to a  
19          depositor, upon the request of a depositor, a



1 statement indicating the depositor's portion of the  
2 escrow account; and  
3 (12) Representations by the escrow agent that it is not and  
4 shall not be during the term of the escrow agreement,  
5 a related party of the provider, a lender to the  
6 provider, or a fiduciary for any lender or bondholder  
7 for the provider, unless approved by the commissioner.

8 § -42 **Changes to escrow agreement.** All changes to an  
9 escrow agreement shall be submitted to, and approved by, the  
10 commissioner before use by a provider.

11 § -43 **Entrance fee and deposit delivery to the escrow**  
12 **agent.** (a) The provider shall deliver to the escrow agent any  
13 entrance fees or deposits required to be maintained in an escrow  
14 account pursuant to this chapter within ten business days after  
15 receipt by the provider.

16 (b) Any deposit delivery to an escrow agent pursuant to  
17 this chapter shall be accompanied with a copy of the executed  
18 nonbinding reservation agreement, binding reservation agreement,  
19 or continuing care contract, a copy of the receipt given to the



1 depositor, a summary of all deposits made on that date, and any  
2 other materials required by the escrow agent.

3       §   **-44 Investment of funds in escrow.** (a) All entrance  
4 fees and deposits subject to an escrow agreement under this  
5 chapter shall be maintained by the escrow agent in one of the  
6 following manners:

- 7       (1) Investment in an interest-bearing account;
- 8       (2) Investment in instruments guaranteed by the federal  
9             government or an agency of the federal government; or
- 10       (3) Investment in investment funds secured by federally  
11             guaranteed instruments.

12       (b) Any investment shall not diminish the funds held in  
13 escrow below the amounts required by this chapter.

14       §   **-45 Earnings from funds in escrow.** (a) Interest,  
15 income, and other gains derived from funds held in an escrow  
16 account shall not be released or distributed from the escrow  
17 account except upon written approval of the commissioner.

18       (b) Approval by the commissioner for the release of  
19 earnings generated from funds held in escrow shall be based upon  
20 an assessment that funds remaining in the escrow account meet



1 the requirements of this chapter and, if applicable, will be  
2 sufficient to pay refunds and any interest promised to all  
3 depositors.

4 (c) When release of earnings is approved by the  
5 commissioner, interest earned by the funds in the escrow account  
6 shall be distributed to the provider or depositors in accordance  
7 with the terms of the continuing care contract, binding  
8 reservation agreement, or nonbinding reservation agreement.

9 § -46 **Escrowed funds not to be used as collateral.** No  
10 funds held in an escrow account shall be encumbered or used as  
11 collateral for any obligation of the provider, or any other  
12 person, unless the provider obtains prior written approval from  
13 the commissioner for the encumbrance or use as collateral. The  
14 commissioner shall not approve any encumbrance or use as  
15 collateral under this section unless the encumbrance or use as  
16 collateral is expressly subordinated to the rights of depositors  
17 under this chapter to refunds of their entrance fees or  
18 deposits.

19 § -47 **Refunds of escrowed entrance fees and deposits.**

20 (a) An escrow agent shall refund to a depositor, or their legal



1 representative, all amounts required by the depositor's  
2 nonbinding reservation agreement, binding reservation agreement,  
3 or continuing care contract upon receiving written notice from  
4 the provider of any of the following:

- 5 (1) The death of a depositor;
- 6 (2) Nonacceptance by the provider;
- 7 (3) Voluntary cancellation;
- 8 (4) The denial of an application pursuant to this chapter;
- 9 or
- 10 (5) Written notice from the commissioner.

11 (b) Refunds required in subsection (a) shall be paid  
12 within ten business days after the escrow agent receives the  
13 written notice described in subsection (a).

14 (c) If voluntary cancellation of a continuing care  
15 contract or a binding reservation agreement occurs after  
16 construction of the continuing care retirement community or  
17 expansion of a continuing care retirement community has begun,  
18 but before the independent living unit's initial occupancy, the  
19 refund may be delayed until another depositor has reserved a  
20 similar independent living unit and paid the necessary entrance



1 fee or deposit. This delay shall not exceed one year, unless  
2 the time period is extended by the commissioner upon a showing  
3 of good cause by the provider.

4 § -48 Release of escrowed entrance fees and deposits.

5 (a) To request a release of the first twenty-five per cent of  
6 each escrowed entrance fee and deposit, a provider shall  
7 petition in writing to the commissioner and certify that:

8 (1) The provider has presold at least fifty per cent of  
9 the proposed independent living units, having received  
10 a minimum ten per cent deposit of the total of each  
11 applicable entrance fee and placed it in escrow. Any  
12 independent living unit for which a refund is pending  
13 shall not be counted toward the fifty per cent  
14 requirement;

15 (2) The provider has long-term financing in place for the  
16 proposed continuing care retirement community or  
17 expansion, or if the provider is leasing the land or  
18 other real property of the continuing care retirement  
19 community, certification that the lease is in place



1           and, if applicable, that the lease has been approved  
2           by the commissioner pursuant to section     -4; and  
3        (3) For a proposed continuing care retirement community,  
4           the aggregate entrance fees received or receivable by  
5           the provider pursuant to binding reservation  
6           agreements and continuing care contracts, plus the  
7           anticipated proceeds of any first mortgage loan or  
8           other long-term financing commitment, plus any equity  
9           being contributed by the provider or a related party,  
10          are equal to not less than ninety per cent of the  
11          following amount:  
12           (A) The aggregate cost of constructing or purchasing,  
13                equipping, and furnishing the proposed continuing  
14                care retirement community;  
15           (B) Plus not less than ninety per cent of the funds  
16                estimated to be necessary to fund start-up losses  
17                and to reasonably assure full performance of the  
18                provider's future continuing care obligations, as  
19                reported in the statement of cash flows required  
20                by section     -61(a)(37).



1 (b) To request a release of the remaining seventy-five per  
2 cent of escrowed entrance fees and deposits, a provider shall  
3 petition in writing to the commissioner and certify that:

4 (1) The provider has presold at least seventy per cent of  
5 the proposed independent living units, having received  
6 a minimum ten per cent deposit of each applicable  
7 entrance fee and maintains at least seventy-five per  
8 cent of each entrance fee or deposit received in  
9 escrow, or has maintained an independent living unit  
10 occupancy minimum of seventy per cent for at least  
11 sixty days; provided that any independent living unit  
12 for which a refund is pending shall not be counted  
13 toward the seventy per cent requirement;

14 (2) Construction or purchase of the independent living  
15 units has been completed and an occupancy permit, if  
16 applicable, has been issued by the local government  
17 having authority to issue those permits; and

18 (3) The independent living units are available for  
19 occupancy by the new residents.



1 (c) The commissioner shall instruct the escrow agent in  
2 writing to release to the provider entrance fees and deposits in  
3 the escrow account only when the commissioner has confirmed the  
4 information provided by the provider pursuant to subsection (a)  
5 or (b).

6 (d) The escrow agent shall release the entrance fees and  
7 deposits held in the escrow account to the provider only when  
8 the commissioner has instructed it to do so in writing.

9 (e) When a provider discloses in an application that  
10 construction will be completed and commence operating in  
11 different phases, the commissioner shall apply the requirements  
12 in subsections (a) and (b) to any one or group of phases  
13 requested by the provider, provided the provider demonstrates in  
14 the prospective financial statements filed with the application  
15 that the phase or group of phases is financially viable without  
16 the need for any additional phases.

17 (f) For the purposes of this section, a refund is pending  
18 if a depositor has canceled a continuing care contract or a  
19 binding reservation agreement but has not yet received a refund,  
20 either because of timing or because another depositor has not



1 reserved a similar independent living unit and paid the  
2 necessary entrance fee or deposit to trigger a refund to the  
3 canceling depositor.

4 **PART V. DISCLOSURE STATEMENT**

5 § -60 **Definitions.** As used in this part:

6 "Adjusted net operating margin ratio" means a profitability  
7 ratio that measures the margin generated from the core  
8 operations of a provider and net cash proceeds from entrance  
9 fees; provided that the quotient is calculated by dividing the  
10 sum of resident operating income and net proceeds from entrance  
11 fees by the sum of resident revenue and net cash proceeds from  
12 entrance fees.

13 "Average daily cash operating expenses" means the total  
14 expenses of a provider incurred in the conduct of the provider's  
15 business over a defined period of time, divided by the number of  
16 days in that period. For the purposes of this definition,  
17 "total expenses" includes interest expense, but excludes  
18 depreciation expense, amortization expense, realized or  
19 unrealized nonoperating losses or expenses, bad debt expense,  
20 and other noncash expenses.



1 "Capital expenditures as a percentage of depreciation  
2 ratio" means a capital structure ratio that indicates the level  
3 of capital reinvestment by a provider; provided that the  
4 quotient is computed by dividing total purchases of property,  
5 plant, and equipment by total depreciation expense.

6 "Cushion ratio" means a liquidity ratio that measures a  
7 provider's ability to pay its annual debt service using its  
8 unrestricted cash and investments; provided that the quotient is  
9 computed by dividing unrestricted cash and investments by annual  
10 debt service.

11 "Days cash on hand ratio" means a liquidity ratio that  
12 measures the number of days of cash operating expenses a  
13 provider could cover using its existing unrestricted cash and  
14 investments; provided that the quotient is computed by dividing  
15 unrestricted cash and investments by average daily cash  
16 operating expenses.

17 "Multi-entity organization" means a collection of distinct  
18 legal entities that are under common control.

19 "Net operating margin ratio" means a profitability ratio  
20 that measures the margin generated from the core operations of a



1 provider; provided that the quotient is calculated by dividing  
2 resident operating income by resident revenue.

3 "Operating ratio" means a profitability ratio that measures  
4 whether current year cash operating revenues are sufficient to  
5 cover current year cash operating expenses without the inclusion  
6 of cash from entrance fee receipts; provided that the quotient  
7 is computed by dividing total operating expenses, excluding  
8 depreciation expense and amortization expense, by total  
9 operating revenues, excluding amortization of entrance fees and  
10 other deferred revenue.

11 "Resale fee" means a contractual assessment by the provider  
12 against the proceeds from the sale of an independent living  
13 unit.

14 "Resident expense" means total operating expenses excluding  
15 interest expense, depreciation expense, amortization expense,  
16 and income taxes.

17 "Resident revenue" means total operating revenue excluding  
18 interest and dividend income, entrance fee amortization, and  
19 contributions.



1 "Unrestricted cash and investments" means the sum of the  
2 provider's unrestricted cash, cash equivalents and investments,  
3 and any provider restricted funds that are available to pay debt  
4 or to pay operating expenses. For the purposes of this  
5 definition, the assets serving as the operating reserve required  
6 by section -120 shall be considered unrestricted.

7 "Unrestricted cash and investments to long-term debt ratio"  
8 means a capital structure ratio that measures:

9 (1) A provider's position in available cash and marketable  
10 securities in relation to its long-term debt; and

11 (2) A provider's ability to withstand annual fluctuations  
12 in cash;

13 provided that the quotient is calculated by dividing  
14 unrestricted cash and investments by total long-term debt, less  
15 the current portion of long-term debt.

16 § -61 **Disclosure statement.** (a) A provider shall  
17 prepare a disclosure statement for each continuing care  
18 retirement community operated or to be operated in the State  
19 that includes:



1           (1) The name, business address, and telephone number of  
2           the provider and a statement of whether the provider  
3           is a partnership, corporation, or other type of legal  
4           entity;

5           (2) A statement disclosing whether the provider is for-  
6           profit or nonprofit, and if nonprofit, the provision  
7           of the federal Internal Revenue Code under which the  
8           provider is exempt from the payment of income tax, and  
9           a statement disclosing whether the provider is current  
10          on all tax filings;

11          (3) A statement disclosing whether the provider is  
12          privately owned or publicly owned;

13          (4) A statement disclosing whether the provider is part of  
14          a multi-entity organization, and if so, both of the  
15          following:

16           (A) A statement indicating whether the audited  
17           financial statements required by paragraph (36)  
18           are prepared on a consolidated basis with all  
19           entities included and, if not, a statement



- 1           indicating how the audited financial statements  
2           are prepared; and
- 3           (B) A company structure chart showing the provider's  
4           relationship with the other entities in the  
5           multi-entity organization;
- 6           (5) A statement identifying the controlling person of the  
7           provider, if control does not exist with the provider,  
8           including the controlling person's business address;
- 9           (6) The name, business address, education, work  
10          experience, and length of service with the provider or  
11          the provider's controlling person of:
- 12          (A) All officers, directors, trustees, managers,  
13          managing or general partners of the provider and,  
14          if applicable, the provider's controlling person,  
15          and any person having a ten per cent or greater  
16          equity or beneficial interest in the provider or  
17          the provider's controlling person; and
- 18          (B) Any person who will be managing the continuing  
19          care retirement community on a day-to-day basis,  
20          and a description of the person's interest in or



1            occupation with the provider or controlling  
2            person; provided that if any person required to  
3            be named pursuant to this paragraph does not have  
4            a business address or uses this person's home  
5            address as the person's business address, the  
6            provider shall list the address of the provider  
7            as the person's business address; provided  
8            further that a provider shall not disclose the  
9            personal address of any person required to be  
10           named pursuant to this paragraph, unless required  
11           to do so by another provision of law or a court  
12           order;

13           (7) The following information on all persons named in  
14           response to paragraphs (1), (5), and (6):

15           (A) A description of the person's business  
16           experience, if any, in the operation or  
17           management of a continuing care retirement  
18           community;

19           (B) The name and address of any professional service  
20           firm, association, trust, partnership, or



1 corporation in which this person has, or which  
2 has in this person, a ten per cent or greater  
3 interest and which it is presently intended shall  
4 currently or in the future provide goods, leases,  
5 or services to the provider of an aggregate value  
6 of \$5,000 or more within any fiscal year,  
7 including a description of the goods, leases, or  
8 services and the actual or probable cost to the  
9 provider, or a statement that this cost cannot  
10 presently be estimated and the reason why it  
11 cannot be presently estimated; and

- 12 (C) A description of any matter in which the person:
- 13 (i) Has been convicted of any felony or pleaded  
14 nolo contendere to a felony charge;
- 15 (ii) Has been held liable or enjoined in a civil  
16 action by final judgment involving fraud,  
17 embezzlement, fraudulent conversion, or  
18 misappropriation of property; or
- 19 (iii) Is subject to a currently effective  
20 injunctive or restrictive court order, or



1           within the past five years, had any state or  
2           federal license or permit suspended or  
3           revoked as a result of an action brought by  
4           a governmental agency or department;

5       (8) A summary of the role and responsibilities of the  
6       board of directors or other governing body of the  
7       provider and, if applicable, the provider's  
8       controlling person, including how the members of the  
9       board of directors or other governing body are  
10      selected and their responsibilities;

11     (9) A statement disclosing whether any related party  
12     provides, or will provide in the case of a continuing  
13     care retirement community under development, goods,  
14     leases, or services to the provider of an aggregate  
15     value of \$5,000 or more within any fiscal year, not  
16     already disclosed pursuant to paragraph (7) or (15),  
17     and a description of the goods, leases, or services  
18     and the actual or probable cost to the provider, or a  
19     statement that this cost cannot presently be estimated  
20     and the reason why it cannot be presently estimated;



1           (10) A statement indicating whether the provider has a  
2                    relationship with any religious, charitable, or other  
3                    organization or person, along with the nature and  
4                    extent of that relationship;

5           (11) The name of any other person who will be responsible  
6                    for the financial and contractual obligations of the  
7                    provider not already disclosed and the extent of their  
8                    responsibility;

9           (12) A statement as to whether the provider is, or will be,  
10                   a part of an obligated group and, if so, the names of  
11                   the other persons in, or to be in, the obligated  
12                   group;

13          (13) A statement as to whether the provider, or any  
14                   obligated group that the provider is a part of, is not  
15                   in compliance with any covenant contained in any debt  
16                   agreement and, if not in compliance, specifying each  
17                   failure to comply and the steps being taken to cure  
18                   the noncompliance;

19          (14) A statement indicating whether the provider currently  
20                   employs or will employ a third-party manager for the



1 continuing care retirement community and, if so, the  
2 name of the third-party manager employed and their  
3 experience in providing management services within the  
4 continuing care retirement community industry;

5 (15) If the provider is leasing or intends to lease from  
6 another person any part of the real property of the  
7 continuing care retirement community, a statement  
8 disclosing the parties to the lease, the original  
9 lease term, and the remaining term of the lease;

10 (16) A statement as to whether the provider has endowment  
11 funds or has endowment funds available through a  
12 related party, that are available to provide financial  
13 aid to residents, including a description of the funds  
14 and any restrictions on their use;

15 (17) The name, address, and description of the physical  
16 property or properties of the continuing care  
17 retirement community, existing or proposed, and to the  
18 extent proposed, the estimated completion date or  
19 dates, whether construction has begun, and the



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- 1 contingencies subject to which construction may be  
2 deferred;
- 3 (18) The number of existing living units, or the number of  
4 living units to be constructed, at the continuing care  
5 retirement community;
- 6 (19) If the provider is licensed to provide continuing care  
7 at home, a description of the continuing care at home  
8 program, including the primary market area served;
- 9 (20) The number or estimated number of residents of the  
10 continuing care retirement community to be provided  
11 services by the provider pursuant to a continuing care  
12 or continuing care at home contract;
- 13 (21) The twelve-month daily average occupancy rate at the  
14 continuing care retirement community, by living unit  
15 type, as of the provider's fiscal year-end for the  
16 past five years or for each year of the continuing  
17 care retirement community's operation if it has been  
18 in operation for less than five years;



- 1           (22) A statement indicating whether the provider held the  
2                    semiannual meetings required by section     -162 during  
3                    the previous fiscal year, including the dates held;
- 4           (23) A description of any property rights of residents in  
5                    the real property of the continuing care retirement  
6                    community;
- 7           (24) The services provided or proposed to be provided  
8                    pursuant to continuing care and continuing care at  
9                    home contracts, including the extent to which health  
10                   care is furnished, and a clear statement of which  
11                   services are included for specified periodic fees and  
12                   which services are or will be made available for an  
13                   extra charge; provided that the description shall  
14                   include a statement describing what health care  
15                   services are or will be provided by the provider  
16                   directly and what health care services are or will be  
17                   provided through a contract with a third party;
- 18          (25) A description of all nonancillary fees required of  
19                   residents, including entrance fees, periodic fees,



1 transfer fees, and resale fees, if any. The  
2 description shall include:

3 (A) A statement of the fees that will be charged if a  
4 resident marries or otherwise increases the  
5 number of persons residing in the resident's  
6 living unit while a resident of the continuing  
7 care retirement community, and a statement of the  
8 terms concerning the entry of a spouse or other  
9 person to the continuing care retirement  
10 community and the consequences if the spouse or  
11 other person does not meet the requirements for  
12 entry;

13 (B) The manner by which the provider may adjust  
14 periodic fees and the limitations on the  
15 adjustments, if any; and, if the continuing care  
16 retirement community is already in operation, a  
17 table showing the frequency, average per cent  
18 increase, and average dollar amount of each  
19 increase in periodic fees for the previous five  
20 years, or for each year of the continuing care



1 retirement community's and, if applicable,  
2 continuing care at home program's operation if it  
3 has been in operation for less than five years;  
4 provided that if the continuing care retirement  
5 community is not yet in operation, the provider  
6 shall include a table showing the expected  
7 frequency, average per cent increase, and average  
8 dollar amount of each increase in periodic fees  
9 utilized in the five-year prospective financial  
10 statements required pursuant to paragraph (37);  
11 and

12 (C) A table showing the current entrance fee charges  
13 as well as the frequency, average per cent  
14 increase, and average dollar amount of each  
15 increase in entrance fees for the previous five  
16 years, or for each year of the continuing care  
17 retirement community and, if applicable,  
18 continuing care at home program's operation if it  
19 has been in operation for less than five years;  
20 provided that if the continuing care retirement



1 community is not yet in operation, the provider  
2 shall include a table showing the expected  
3 frequency, average per cent increase, and average  
4 dollar amount of each increase in entrance fees  
5 utilized in the five-year prospective financial  
6 statements required pursuant to paragraph (37);

7 (26) For providers who offer refundable entrance fee  
8 continuing care or continuing care at home contracts,  
9 a statement disclosing:

10 (A) The conditions that shall be met before all or  
11 any portion of an entrance fee will be refunded;  
12 and

13 (B) The number and aggregate dollar amount of  
14 refundable entrance fee refunds that, as of the  
15 provider's most recent fiscal year-end:

16 (i) Will be due once all contractual conditions  
17 are met;

18 (ii) Are currently due, including a disclosure of  
19 the number and aggregate dollar amount of



1                   refunds that are thirty or more days past  
2                   due;

3                   (iii) Will be due, once all conditions are met, to  
4                   residents who have permanently vacated their  
5                   independent living unit and now reside in a  
6                   non-independent living unit provided by the  
7                   provider; or

8                   (iv) Will be due to residents who have  
9                   permanently vacated their independent living  
10                  unit and now reside in a non-independent  
11                  living unit provided by the provider whose  
12                  former independent living unit has already  
13                  been resold;

14           (27) The circumstances under which a resident will be  
15           authorized to remain a resident at the continuing care  
16           retirement community in the event of possible  
17           financial difficulties of the resident;

18           (28) The terms and conditions under which a continuing care  
19           and continuing care at home contract may be canceled  
20           by the provider, or by the resident, and the



1 conditions, if any, under which all or any portion of  
2 the entrance fee or any other fee will be refunded in  
3 the event of cancellation of the continuing care or  
4 continuing care at home contract by the provider, or  
5 by the resident, or in the event of the death of the  
6 resident, prior to, or following, occupancy of a  
7 living unit or the start of services not already  
8 disclosed in paragraph (26);

9 (29) The conditions under which a living unit occupied by a  
10 resident may be made available by the provider to a  
11 different or new resident other than on the death of  
12 the prior resident;

13 (30) The conditions or circumstances under which a provider  
14 may require a resident to move from the resident's  
15 living unit to another living unit for the safety of  
16 the resident or for the good of the provider;

17 (31) The health and financial condition required for an  
18 individual to be accepted as a resident and to  
19 continue as a resident once accepted, including the  
20 effect of any change in the health or financial



1 condition of a person between the date of entering  
2 into a continuing care or continuing care at home  
3 contract and the date of initial occupancy of a living  
4 unit or the start of services;

5 (32) Any age and insurance requirements for admission;

6 (33) The provisions that have been made or will be made,  
7 including the requirements of section -40 and  
8 section -120, to provide reserve funding or  
9 security to enable the provider to refund entrance  
10 fees and deposits when due and to fulfill all of its  
11 other obligations under binding reservation  
12 agreements, continuing care contracts, and continuing  
13 care at home contracts, including the establishment of  
14 escrow accounts, trusts, or reserve funds, together  
15 with the manner in which these funds will be invested,  
16 and the names and experience of any person or persons  
17 who will make the investment decisions; provided that  
18 the information provided shall also include a schedule  
19 detailing how the operating reserve for the continuing  
20 care retirement community has been calculated which



- 1 shall agree with the amount calculated and reported to  
2 the commissioner pursuant to section -125;
- 3 (34) A description of any expansion, renovation, or planned  
4 expansion or renovation of the continuing care  
5 retirement community;
- 6 (35) An explanation if the provider's most recent audited  
7 financial statements were not prepared within on  
8 hundred fifty days or if an audit opinion was received  
9 other than an unqualified opinion;
- 10 (36) Audited financial statements meeting the requirements  
11 of section -91;
- 12 (37) Five-year prospective financial statements of the  
13 provider that are either compiled or examined by an  
14 independent certified public accountant, that can be  
15 prepared on a stand-alone basis, or consolidated or  
16 combined with the same persons as the annual audited  
17 financial statements filed with the commissioner  
18 pursuant to section -91, and that includes:
- 19 (A) A summary of significant assumptions and a  
20 summary of significant accounting policies;



- 1 (B) If financial projections, an identification of
- 2 the hypothetical assumptions and a description of
- 3 the limitations on the usefulness of the
- 4 presentation;
- 5 (C) As supplemental information, if prepared on a
- 6 consolidated or combined basis, a consolidating
- 7 or combining:
- 8 (i) Balance sheet;
- 9 (ii) Statement of operations and changes in net
- 10 assets or equity; and
- 11 (iii) Statement of cash flows;
- 12 (D) A statement of operations as supplemental
- 13 information for each continuing care retirement
- 14 community operated under this chapter if the
- 15 provider operates more than one continuing care
- 16 retirement community or has operations that are
- 17 separate and distinct from the operation of a
- 18 continuing care retirement community operating
- 19 under this chapter;



- 1 (E) Contains the same line items and categories as  
2 the annual audited financial statements filed  
3 with the commissioner pursuant to section -90;  
4 and
- 5 (F) For continuing care retirement communities that  
6 are under development, the prospective financial  
7 statements required by this paragraph shall  
8 include narrative disclosure detailing all  
9 significant assumptions used in the preparation  
10 of the prospective financial statements,  
11 including:
- 12 (i) Details of any long-term financing for the  
13 purchase or construction of the continuing  
14 care retirement community, including  
15 interest rate, repayment terms, loan  
16 covenants, and assets pledged;
- 17 (ii) Details of any leasing agreements where the  
18 provider is leasing from another person any  
19 part of the real property of the continuing



1 care retirement community, including the  
2 length of the lease and the remaining term;  
3 (iii) Details of any other funding sources that  
4 the provider anticipates using to fund any  
5 start-up losses or to provide reserve funds  
6 to assure full performance of the  
7 obligations of the provider under continuing  
8 care contracts;  
9 (iv) The total entrance fees to be received from  
10 or on behalf of, residents at, or prior to,  
11 commencement of operations along with  
12 anticipated accounting methods used in the  
13 recognition of revenues from and expected  
14 refunds of entrance fees;  
15 (v) A description of any equity capital to be  
16 received by the provider;  
17 (vi) The cost of the acquisition of the  
18 continuing care retirement community or, if  
19 the continuing care retirement community is  
20 to be constructed, the estimated



- 1 construction cost and cost to acquire the
- 2 land;
- 3 (vii) Related costs, including financing and
- 4 development costs, that the provider expects
- 5 to incur or become obligated for prior to
- 6 the commencement of operations;
- 7 (viii) The marketing and resident acquisition costs
- 8 to be incurred prior to commencement of
- 9 operations; and
- 10 (ix) A description of the assumptions used for
- 11 calculating the estimated occupancy rate of
- 12 the continuing care retirement community and
- 13 the effect on the income of the provider of
- 14 government subsidies for health care
- 15 services;
- 16 (38) A narrative describing the reasons for any material
- 17 differences between:
- 18 (A) The five-year prospective financial statements
- 19 included as a part of the disclosure statement
- 20 recorded most immediately subsequent to the start



1 of the provider's most recently completed fiscal  
2 year; and

3 (B) The actual results of operations of the  
4 provider's most recently completed fiscal year;

5 (39) A table detailing the following key financial metrics  
6 for the past three fiscal years, including the most  
7 recent fiscal year, or for each year the provider has  
8 been in operation if the provider has been in  
9 operation for less than three years, plus the next  
10 three fiscal years, based on the provider's current  
11 and prior annual audited financial statements and  
12 current five-year prospective financial statements;  
13 provided that if there is a material year over year  
14 change in any of the key financial metrics, the  
15 provider shall include a narrative describing the  
16 reasons for the material change; provided further that  
17 for providers who are part of an obligated group, the  
18 ratios shall be computed for the provider alone and  
19 for the obligated group:

20 (A) Liquidity ratios:



- 1 (i) Days cash on hand ratio; and
- 2 (ii) Cushion ratio;
- 3 (B) Profitability ratios:
  - 4 (i) Operating ratio;
  - 5 (ii) Net operating margin ratio; and
  - 6 (iii) Adjusted net operating margin ratio;
- 7 (C) Capital structure ratios:
  - 8 (i) Debt service coverage ratio;
  - 9 (ii) Unrestricted cash and investments to long-
  - 10 term debt ratio; and
  - 11 (iii) Capital expenditures as a per centage of
  - 12 depreciation expense ratio;
- 13 (40) If the provider has had an actuarial study prepared
- 14 within the prior three years, a statement of actuarial
- 15 opinion which includes a description of the key
- 16 assumptions used to prepare the actuarial study and an
- 17 opinion on satisfactory actuarial balance;
- 18 (41) A summary of the last examination report issued by the
- 19 commissioner, if any, with references to the page
- 20 numbers of the examination report noting any



1 deficiencies found by the commissioner, and the  
2 actions taken by the provider to rectify those  
3 deficiencies, indicating in the summary where the full  
4 examination report may be inspected at the continuing  
5 care retirement community; provided that the summary  
6 required by this paragraph shall not be required if  
7 the last examination report is more than three years  
8 old; and

9 (42) Any other material information concerning the  
10 continuing care retirement community, the provider, or  
11 any related party of the provider, which, if omitted,  
12 would lead a reasonable person not to enter a  
13 continuing care or continuing care at home contract  
14 with the provider.

15 (b) A copy of the most common continuing care and  
16 continuing care at home contract used by the provider shall be  
17 attached to each disclosure statement. To the extent multiple  
18 continuing care or continuing care at home contracts are  
19 utilized by the provider for the continuing care retirement  
20 community, a narrative shall be included within the disclosure



1 statement listing each contract type offered and the material  
2 differences of each.

3 (c) The cover page of the disclosure statement shall, in a  
4 prominent location and in boldface type, include:

5 (1) The date of the disclosure statement;

6 (2) The last date through which the disclosure statement  
7 may be delivered;

8 (3) That the delivery of the disclosure statement to a  
9 contracting party before the execution of a binding  
10 reservation agreement, continuing care contract, or  
11 continuing care at home contract is required by this  
12 chapter;

13 (4) That the disclosure statement has not been reviewed or  
14 approved by any government agency or representative to  
15 ensure accuracy of the information set out;

16 (5) That the disclosure statement has been filed with, and  
17 recorded by, the commissioner in accordance with this  
18 chapter; and

19 (6) That the disclosure statement contains the information  
20 required by this chapter, that it is correct, in all



1 material respects, and that knowingly delivering a  
2 disclosure statement that contains an untrue statement  
3 or omits a material fact may subject the provider to  
4 penalties as set forth in this chapter.

5 (d) The date on the cover page of the disclosure statement  
6 shall coincide with the last day of the provider's fiscal year  
7 covered by the information contained within the disclosure  
8 statement.

9 (e) The disclosure statement shall be in plain English and  
10 in language understandable by a layperson and combine  
11 conciseness, simplicity, and accuracy to fully advise residents  
12 and potential residents of the items required by this section.

13 (f) The commissioner shall review the disclosure statement  
14 for completeness but is not required to review the disclosure  
15 statement for accuracy.

16 (g) The commissioner may require a provider to alter or  
17 amend a disclosure statement to provide full and fair disclosure  
18 to residents and prospective residents, and the commissioner may  
19 require the revision of a disclosure statement which the



1 commissioner finds to be incomplete, unnecessarily complex,  
2 voluminous, confusing, or illegible.

3 (h) The commissioner may prescribe a standardized format  
4 for the disclosure statement required by this section.

5 (i) The commissioner shall post the current disclosure  
6 statement for each continuing care retirement community on the  
7 commissioner's website in accordance with this chapter.

8 § -62 **Required delivery of disclosure statement.** (a) A  
9 provider shall deliver a current disclosure statement meeting  
10 the requirements of section -61 to the person or the person's  
11 legal representative with whom a binding reservation agreement,  
12 continuing care contract, or continuing care at home contract is  
13 to be entered into. The disclosure statement shall be delivered  
14 no later than the earliest of the following occurrences:

15 (1) The execution of a binding reservation agreement,  
16 continuing care contract, or continuing care at home  
17 contract; or

18 (2) The transfer of any money or other consideration,  
19 other than a nonbinding reservation agreement deposit,



1           to a provider by or on behalf of a prospective  
2           resident.

3           For the purposes of this subsection, a disclosure statement  
4 is current if it is dated within one year plus one hundred sixty  
5 days before the date of delivery and is the most recently  
6 recorded disclosure statement on file with the commissioner.

7           (b) The delivery required by this section may be by  
8 electronic means if the provider obtains the written consent of  
9 the person with whom the binding reservation agreement,  
10 continuing care contract, or continuing care at home contract is  
11 to be entered into. For the purposes of this subsection,  
12 delivery by electronic means shall mean delivery by either of  
13 the following methods:

14           (1) Delivery to an electronic mail address at which the  
15           person has consented to receive the disclosure  
16           statement; or

17           (2) Both of the following:

18           (A) Posting the disclosure statement on an electronic  
19           network or site accessible by the Internet  
20           through use of a mobile application, computer,



1 mobile device, tablet, or any other electronic  
2 device; and

3 (B) Sending separate notice of the posting described  
4 in subparagraph (A) to the electronic mail  
5 address at which the person consented to receive  
6 notice of the disclosure statement posting.

7 (c) After receiving delivery of a disclosure statement  
8 pursuant to this section, a prospective resident shall sign an  
9 acknowledgement of receipt. The acknowledgement shall include:

10 (1) The date;

11 (2) The name of the person signing; and

12 (3) The date of the disclosure statement received,  
13 including date revised, if any.

14 The provider shall provide a copy of the acknowledgement of  
15 receipt to the person signing and shall maintain the original.

16 The acknowledgement of receipt required by this subsection may  
17 be received, given, and maintained in either an electronic or  
18 paper form.

19 (d) A copy of all disclosure statements, including all  
20 amendments, filed with and recorded by the commissioner shall be



1 maintained by the provider, in either electronic or paper form,  
2 for at least five years.

3       §   -63 **Annual revised disclosure statements.** (a) Within  
4 one hundred fifty days following the end of each fiscal year, a  
5 provider shall file with the commissioner a revised disclosure  
6 statement setting forth current information required pursuant to  
7 section   -61. The annual disclosure statement revision shall  
8 be accompanied by an annual filing fee of \$2,000.

9       (b) Within five business days of receipt of an annual  
10 revised disclosure statement and the annual filing fee, the  
11 commissioner shall notify the provider in writing that:

12       (1) The revised disclosure statement has been received and  
13           recorded;

14       (2) The provider has met the filing requirements of this  
15           section; and

16       (3) The annual revised disclosure statement is now  
17           considered to be the current disclosure statement for  
18           the purposes of this chapter.

19 After sending the notice, the commissioner shall post the annual  
20 revised disclosure statement on the commissioner's website



1 within five business days. After receiving the commissioner's  
2 notice, the provider shall make the annual revised disclosure  
3 statement available to all residents and depositors either in  
4 electronic or paper form.

5 (c) The commissioner may, upon a showing of good cause by  
6 the provider, extend the due date of the annual disclosure  
7 statement revision for a reasonable period of time not to exceed  
8 thirty days.

9 (d) If the annual disclosure statement revision is not  
10 received by the due date and no extension has been granted, a  
11 \$1,000 late fee shall accompany submission of the annual  
12 disclosure statement revision. The commissioner may waive the  
13 late fee upon a showing of good cause by the provider.

14 **§ -64 Other revisions to disclosure statement.** (a) A  
15 provider may revise its disclosure statement at any time if, in  
16 the opinion of the provider, revision is necessary to prevent an  
17 otherwise current disclosure statement from containing a  
18 material misstatement of fact or omitting a material fact  
19 required to be stated therein. A provider that revises its  
20 disclosure statement for this purpose shall submit the revised



1 disclosure statement to the commissioner before delivery of the  
2 disclosure statement to any resident or prospective resident.

3 (b) If a disclosure statement is revised in accordance  
4 with this section or section -61(g), the cover page shall  
5 additionally be revised to reflect the revision date.

6 (c) Within five business days of receipt of a revised  
7 disclosure statement pursuant to this section, the commissioner  
8 shall notify the provider in writing that the revised disclosure  
9 statement has been received and recorded and is the current  
10 disclosure statement for the purposes of this chapter. After  
11 sending this notification, the commissioner shall post the  
12 revised disclosure statement on the commissioner's website  
13 within five business days. After receiving the commissioner's  
14 notification, a provider revising its disclosure statement  
15 pursuant to this section shall make the revised disclosure  
16 statement available to all residents either in electronic or  
17 paper form.

18 **PART VI. BINDING RESERVATION AGREEMENT AND CONTINUING CARE**

19 **CONTRACT**



1           §   -70   **Binding reservation agreement.**   A binding  
2 reservation agreement shall include the following:  
3           (1)   A provision that the person entering into the  
4                agreement may rescind the agreement within thirty days  
5                following the later of the following occurrences:  
6                (A)   The execution of the agreement; or  
7                (B)   The receipt of a disclosure statement that meets  
8                    the requirements of section     -61;  
9           (2)   A provision that the agreement shall be automatically  
10                canceled if either of the following occurs:  
11                (A)   Depositor dies before signing a continuing care  
12                    contract; or  
13                (B)   A depositor would be precluded from signing a  
14                    continuing care contract and occupying a living  
15                    unit in the continuing care retirement community  
16                    under the terms of a continuing care contract due  
17                    to illness, injury, or incapacity;  
18           (3)   A provision that, if an agreement is rescinded,  
19                automatically canceled, or otherwise canceled by the  
20                depositor, the depositor shall receive a refund of all



1 money or other consideration transferred to the  
2 provider. The following shall be deducted from the  
3 depositor's refund:

4 (A) Nonstandard costs specifically incurred by the  
5 provider at the request of the depositor and  
6 described in the agreement;

7 (B) Any nonrefundable fees specifically set forth in  
8 the agreement;

9 (C) Any service charge specifically set forth in the  
10 agreement that shall not exceed the greater of  
11 \$3,000 or two per cent of the entrance fee;  
12 provided that in no event shall the service  
13 charge exceed the amount of consideration  
14 transferred to the provider by the depositor or a  
15 service charge be assessed due to the termination  
16 of the agreement because of the failure of the  
17 provider to meet its obligations under the  
18 agreement, or upon the failure of the provider to  
19 obtain a permanent license in accordance with  
20 this chapter; and



1 (4) A provision that any refund due to a depositor for a  
2 cancellation or termination for reasons not provided  
3 for in this section shall be computed in accordance  
4 with the terms of the agreement.

5 § -71 **Continuing care contract.** (a) A continuing care  
6 contract shall include the following:

7 (1) A provision that the person contracting with the  
8 provider may rescind the contract within thirty days  
9 following the later of:

- 10 (A) The execution of the contract; or
- 11 (B) The receipt of a disclosure statement that meets  
12 the requirements of section -61;

13 and a resident to whom the contract pertains is not  
14 required to move into the continuing care retirement  
15 community before the expiration of the thirty-day  
16 period.

17 (2) A provision that, if a resident dies before occupying  
18 a living unit in the continuing care retirement  
19 community, or if, on account of illness, injury, or  
20 incapacity, a resident would be precluded from



1 occupying a living unit in the continuing care  
2 retirement community under the terms of the contract,  
3 the contract is automatically canceled;

4 (3) A provision that, for rescinded or canceled contracts  
5 under this subsection and contracts canceled before a  
6 living unit is initially available for occupancy by  
7 the first resident of a living unit, the resident or  
8 the resident's legal representative, shall receive a  
9 refund of all money or other consideration transferred  
10 to the provider, less:

11 (A) Periodic fees specified in the contract and  
12 applicable only to the period a living unit was  
13 actually occupied by the resident;

14 (B) Those nonstandard costs specifically incurred by  
15 the provider at the request of the resident and  
16 described in the contract or any contract  
17 amendment signed by the resident;

18 (C) Nonrefundable fees, if set out in the contract;  
19 and



1 (D) A reasonable service charge, if set out in the  
2 contract, not to exceed the greater of \$3,000 or  
3 two per cent of the entrance fee; provided that  
4 in no event shall the service charge exceed the  
5 amount of consideration transferred to the  
6 provider by the resident, or a service charge be  
7 assessed due to the termination of the contract  
8 because of the failure of the provider to meet  
9 its obligations under the contract, or upon the  
10 failure of the provider to obtain a permanent  
11 license in accordance with this chapter; and

12 (4) A provision that any refund due to a resident for a  
13 cancellation or termination for reasons not provided  
14 for in this section shall be computed in accordance  
15 with the terms of the contract.

16 (b) A continuing care contract shall specify:

17 (1) All fees required of residents, including any entrance  
18 fee and any ongoing periodic fees;

19 (2) The services to be provided;



- 1 (3) The policy regarding changing the resident's living
- 2 unit, if necessary, for the protection of the health
- 3 or safety of the resident or the general and economic
- 4 welfare of other residents;
- 5 (4) The policies to be implemented if the resident cannot
- 6 pay the periodic fees;
- 7 (5) The terms governing the refund of any portion of the
- 8 entrance fee in the event of death or cancellation by
- 9 the resident or provider;
- 10 (6) The policy regarding increasing the periodic fees;
- 11 (7) A description of the living unit;
- 12 (8) Any property rights of the resident;
- 13 (9) The policy, if any, regarding periodic fee adjustments
- 14 if the resident is absent from the continuing care
- 15 retirement community; and
- 16 (10) Any requirement that the resident maintain long-term
- 17 care insurance or apply for medicaid benefits or any
- 18 other public assistance program.
- 19 (c) A continuing care contract shall include the following
- 20 notice immediately above the contract signature line and be in



1 type that is boldfaced, capitalized, underlined, or otherwise  
2 set out from the surrounding written material to be conspicuous:

3 "NOTICE

4 Because the authority to enter into continuing care contracts  
5 granted by the Insurance Commissioner is neither a guarantee of  
6 performance by the provider nor an endorsement of any continuing  
7 care contract provision, prospective residents shall carefully  
8 consider the risks, benefits, and costs before signing a  
9 continuing care contract and are strongly encouraged to seek  
10 financial and legal advice before doing so."

11 **PART VII. CONTINUING CARE AT HOME**

12 § -80 **Home care services defined.** As used in this part,  
13 "home care services" has the same meaning as defined in section  
14 321-14.8.

15 § -81 **Application.** (a) No person shall arrange or  
16 provide continuing care at home unless licensed by the  
17 commissioner pursuant to this chapter. Only a provider who has  
18 obtained a permanent license or a restricted permanent license  
19 pursuant to this chapter may apply to the commissioner for a  
20 continuing care at home license. The application shall include:



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- 1           (1) An application fee of \$500;
- 2           (2) A draft amended disclosure statement containing a
- 3           description of the proposed continuing care at home
- 4           program, including the primary market area to be
- 5           served, the types of services to be provided, and the
- 6           fees to be charged;
- 7           (3) A copy of the proposed continuing care at home
- 8           contract;
- 9           (4) An actuarial study prepared in accordance with
- 10          accepted actuarial standards of practice which
- 11          estimates when the continuing care at home program is
- 12          projected to be in satisfactory actuarial balance;
- 13          provided that providers who do not collect entrance
- 14          fees or some other type of up-front prepayment of
- 15          costs are exempt from this requirement and shall only
- 16          be required to submit an actuarial projection of
- 17          future population flows and adult care home bed and
- 18          nursing bed needs using appropriate mortality,
- 19          morbidity, withdrawal, occupancy, and other
- 20          demographic assumptions, and using a projection period



1           that extends to a point at which, in the actuary's  
2           professional judgment, the use of a longer period  
3           would not materially affect the results and  
4           conclusions;

5           (5) A market study prepared by a person experienced in the  
6           preparation of market studies for continuing care at  
7           home or similar programs that demonstrates sufficient  
8           interest in a continuing care at home program;

9           (6) Prospective financial statements prepared by an  
10          independent certified public accountant that show the  
11          financial impact of providing continuing care at home  
12          on the provider and the continuing care retirement  
13          community. The prospective financial statements shall  
14          include a statement of activities reporting the  
15          revenue and expense details for providing continuing  
16          care at home, as well as the impact the program will  
17          have on the operations of the provider and the  
18          continuing care retirement community, including the  
19          operating reserve; and



1 (7) Evidence of the license required under chapter 321 to  
2 provide home care services, or a contract with a  
3 licensed home care agency for the provision of home  
4 care services to be provided to residents under the  
5 continuing care at home program.

6 (b) The commissioner shall comply with the review schedule  
7 in section -24 in response to an application for a continuing  
8 care at home license.

9 (c) The commissioner shall approve an application for a  
10 continuing care at home license if the following requirements  
11 are met:

12 (1) The application complies with this section;

13 (2) None of the grounds for denial listed in section -  
14 131 apply to the applicant;

15 (3) The applicant is able to provide continuing care at  
16 home as proposed;

17 (4) There is sufficient consumer interest in the  
18 continuing care at home program proposed by the  
19 applicant, as evidenced by the market study; and



1 (5) The program proposed by the applicant will not have a  
2 detrimental financial impact on the applicant and  
3 continuing care retirement community, as determined by  
4 the commissioner.

5 (d) After receiving a continuing care at home license, the  
6 provider may arrange or provide continuing care at home and  
7 shall file an amended disclosure statement with the commissioner  
8 which contains the information regarding continuing care at home  
9 required by section -61.

10 (e) After the issuance of a continuing care at home  
11 license, the commissioner shall require a provider to submit  
12 periodic reports in a form prescribed by the commissioner to  
13 monitor the status of the continuing care at home program.

14 § -82 **Continuing care at home contract.** (a) A  
15 continuing care at home contract shall include the following  
16 provisions:

17 (1) A provision that the individual contracting with the  
18 provider may rescind the contract within thirty days  
19 following the later of:

20 (A) The execution of the contract; or



- 1           (B) The receipt of a disclosure statement that meets  
2           the requirements of section -61;
- 3           (2) A provision that, if a resident dies before the  
4           effective start date of services, or if, on account of  
5           illness, injury, or incapacity, a resident would be  
6           precluded from meeting the eligibility terms of the  
7           contract, the contract is automatically canceled;
- 8           (3) A provision that, for rescinded or canceled contracts  
9           under this subsection, the resident, or the resident's  
10          legal representative, shall receive a refund of all  
11          money or other consideration transferred to the  
12          provider, less:
- 13          (A) Periodic fees specified in the contract and  
14          applicable only to the period when services were  
15          provided to the resident;
- 16          (B) Nonrefundable fees, if set out in the contract;  
17          and
- 18          (C) A reasonable service charge, if set out in the  
19          contract, not to exceed the greater of \$3,000 or  
20          two per cent of the entrance fee, if any; and



- 1 (4) A provision that any refund due to a resident for any  
2 other cancellation or termination not provided for in  
3 paragraphs (1) and (2) shall be computed in accordance  
4 with the terms of the contract.
- 5 (b) A continuing care at home contract shall specify:
- 6 (1) All fees required, including any entrance fee and any  
7 ongoing periodic fees;
- 8 (2) The services to be provided;
- 9 (3) The policies to be implemented if the resident cannot  
10 pay the periodic fees;
- 11 (4) The terms governing the refund of any portion of the  
12 entrance fee in the event of death or cancellation by  
13 the resident or provider;
- 14 (5) The policy regarding the adjustment of periodic fees;
- 15 (6) Whether transportation will be provided to residents,  
16 including travel to and from the continuing care  
17 retirement community for services;
- 18 (7) The mechanism for monitoring residents who live  
19 outside the continuing care retirement community;



- 1           (8) The process that will be followed to establish  
2           priority if a resident wishes to exercise the  
3           resident's right to move into an independent living  
4           unit at a continuing care retirement community  
5           operated by the provider;
- 6           (9) The process the provider will follow if it becomes  
7           necessary for the resident to move into a long-term  
8           care facility;
- 9           (10) The policy that will be followed if a resident chooses  
10          not to move to a long-term care facility when  
11          recommended by the provider;
- 12          (11) The policy, if any, that would entitle a resident to  
13          select placement in a long-term care facility that is  
14          not owned and operated by the provider or by a related  
15          party of the provider; and
- 16          (12) A statement describing any applicable geographical  
17          limits of the continuing care at home program, and the  
18          policy that will be followed in the event that a  
19          resident relocates to a different residence outside





1 certified public accountant and shall file audited financial  
2 statements with the commissioner within one hundred fifty days  
3 following the end of each fiscal year.

4 (b) Extensions of the filing date may be granted by the  
5 commissioner for thirty-day periods upon a showing by the  
6 provider and its independent certified public accountant of the  
7 reasons for requesting an extension and determination by the  
8 commissioner of good cause for an extension; provided that the  
9 request for extension shall be received in writing not less than  
10 ten days before the due date and in sufficient detail to permit  
11 the commissioner to make an informed decision with respect to  
12 the requested extension.

13 (c) If an initial extension is granted in accordance with  
14 subsection (b), a similar extension of thirty days shall be  
15 granted for the filing of the provider's annual disclosure  
16 statement.

17 **§ -91 Contents of annual audited financial statements.**

18 (a) The annual audited financial statements shall report the  
19 financial position of the provider as of the end of the most  
20 recent fiscal year and the results of its operations, cash



1 flows, and changes in equity or net assets for the year then  
2 ended. The audited financial statements shall be comparative,  
3 presenting the amounts as of the end of the most current year-  
4 end and the amounts as of the immediately preceding year-end;  
5 provided that in the first year in which a provider is required  
6 to file audited financial statements, the comparative data may  
7 be omitted.

8 (b) The audited financial statements shall include:

- 9 (1) Report of independent certified public accountant;  
10 (2) Balance sheet reporting assets, liabilities, and net  
11 assets or equity;  
12 (3) Statement of operations;  
13 (4) Statement of cash flows;  
14 (5) Statement of changes in net assets or equity; and  
15 (6) Notes to financial statements.

16 (c) The audited financial statements shall be prepared in  
17 accordance with one of the following requirements:

- 18 (1) If a provider is required by generally accepted  
19 accounting principles to have their financial  
20 statements consolidated with other persons, the



1 audited consolidated financial statements shall  
2 include a consolidating balance sheet, a consolidating  
3 statement of operations and changes in net assets or  
4 equity, and a consolidating statement of cash flows as  
5 supplemental information to the audited consolidated  
6 financial statements. This supplemental information  
7 shall also include a statement of operations for each  
8 continuing care retirement community operated by the  
9 provider under this chapter;

10 (2) If the provider includes one or more persons acting in  
11 concert to offer and provide continuing care, the  
12 audited financial statements shall be combined and  
13 shall include a combining balance sheet, a combining  
14 statement of operations and changes in net assets or  
15 equity, and a combining statement of cash flows as  
16 supplemental information to the audited combined  
17 financial statements. This supplemental information  
18 shall also include a statement of operations for each  
19 continuing care retirement community operated by the  
20 provider under this chapter;



- 1 (3) If a provider is part of an obligated group, the  
2 audited financial statements shall be either  
3 consolidated or combined with the other members of the  
4 obligated group and shall include a combining or  
5 consolidating balance sheet, a combining or  
6 consolidating statement of operations and changes in  
7 net assets or equity, and a combining or consolidating  
8 statement of cash flows as supplemental information to  
9 the audited combined or consolidated financial  
10 statements. This supplemental information shall also  
11 include a statement of operations for each continuing  
12 care retirement community operated by the provider  
13 under this chapter; and
- 14 (4) If the provider is not required by generally accepted  
15 accounting principles to have their financial  
16 statements consolidated with other persons, does not  
17 include one or more persons acting in concert to offer  
18 and provide continuing care, and is not part of an  
19 obligated group, then the audited financial statements  
20 shall be a stand-alone financial audit of the



1 provider. The audited financial statements shall  
2 include as supplemental information, if the provider  
3 operates more than one continuing care retirement  
4 community or has operations that are separate and  
5 distinct from the operation of a continuing care  
6 retirement community or communities under this  
7 chapter, a statement of operations for each continuing  
8 care retirement community operated by the provider  
9 under this chapter.

10 (d) If a provider is also licensed to provide continuing  
11 care at home, the audited financial statements shall account for  
12 the related revenue and expenses generated from the continuing  
13 care at home program separate from the provider's other  
14 operations when providing the information required by this  
15 section.

16 § -92 **Quarterly reporting.** Within forty-five days after  
17 the end of each fiscal quarter, a provider shall file with the  
18 commissioner the following:

19 (1) Quarterly unaudited financial statements of the  
20 provider and any obligated group of which the provider



1 is a member, which shall include a balance sheet, a  
2 statement of operations, and a statement of cash  
3 flows, which shall contain the same categories and  
4 line items as the annual audited financial statements  
5 filed with the commissioner pursuant to section -  
6 90;

7 (2) The twelve-month daily average occupancy rate by  
8 living unit type at each continuing care retirement  
9 community operated by the provider in the State in a  
10 form prescribed by the commissioner; and

11 (3) Notice of the following:

12 (A) Any change in the provider's or the provider's  
13 controlling person's board of directors or other  
14 governing body, president, chief executive  
15 officer, and chief financial officer. Notice  
16 shall include the name of the provider, the name  
17 of the controlling person, if applicable, the  
18 name of the person previously holding the  
19 position, the name of the person currently  
20 holding the position, a brief biography of the



1 person currently holding the position, and the  
2 date the position change took place; and

3 (B) Any change in the organizational documents of the  
4 provider, including changes in the provider's  
5 articles of incorporation and bylaws. Copies of  
6 the changed documents shall be submitted with the  
7 notification to the commissioner.

8 § -93 **Actuarial study.** (a) A provider shall submit to  
9 the commissioner, at least once every three years, an actuarial  
10 study prepared in accordance with accepted actuarial standards  
11 of practice for each continuing care retirement community  
12 operated by the provider in the State and any continuing care at  
13 home program that the provider is licensed for pursuant to this  
14 chapter.

15 (b) If the actuary is unable to form an opinion, or if the  
16 opinion is adverse or qualified, the statement of actuarial  
17 opinion and the actuarial study shall specifically state the  
18 reason.



1 (c) The commissioner may request the information required  
2 in this section more frequently to assist in the determination  
3 of a possible hazardous condition.

4 (d) A provider required to file an actuarial study under  
5 this section that held a license on the effective date of this  
6 section shall file an actuarial study with the commissioner  
7 before the expiration of three years following the effective  
8 date of this section; provided that each provider shall file its  
9 required actuarial study before the expiration of three years  
10 following the date it last filed an actuarial study with the  
11 commissioner.

12 (e) A provider required to file an actuarial study under  
13 this section that did not hold a license on the effective date  
14 of this section shall file its first actuarial study within  
15 forty-five days following the due date for the provider's annual  
16 audited financial statements for the fiscal year in which the  
17 provider obtained its permanent license; provided that the  
18 provider shall file its required actuarial study before the  
19 expiration of three years following the date it last filed an  
20 actuarial study with the commissioner.



1 (f) A provider that only offers health care on a fee-for-  
2 service basis or only provides a limited discount or limited  
3 number of free days in a long-term care facility shall be  
4 exempt, unless otherwise required by the commissioner, from the  
5 actuarial study requirement in this section. Providers exempt  
6 pursuant to this subsection shall submit to the commissioner, at  
7 least once every five years, an actuarial projection of future  
8 population flows and adult care home bed and nursing bed needs  
9 using appropriate mortality, morbidity, withdrawal, occupancy,  
10 and other demographic assumptions and using a projection period  
11 that extends to a point at which, in the actuary's professional  
12 judgment, the use of a longer period would not materially affect  
13 the results and conclusions. The commissioner may require an  
14 actuarial projection of future population flows and adult care  
15 home bed and nursing bed needs sooner if there has been an  
16 increase or decrease of twenty per cent or more of one or more  
17 types of living units at a continuing care retirement community  
18 during the provider's most recent fiscal year.

19 § -94 **Additional reporting.** If the commissioner  
20 determines that additional information is needed to properly



1 monitor the financial condition or operations of a provider or  
2 continuing care retirement community or is otherwise needed to  
3 protect the interests of residents and the public, the  
4 commissioner may require a provider licensed under this chapter  
5 to file any of the following:

- 6 (1) Monthly unaudited financial statements in the format  
7 required by section -92 which shall be due no later  
8 than forty-five days after the end of each month; or  
9 (2) Any other data, financial statements, and pertinent  
10 information as the commissioner may reasonably require  
11 regarding the provider, the provider's obligated  
12 group, the continuing care retirement community, or  
13 any related party, if the provider relies on a  
14 contractual or financial relationship with the related  
15 party in order to meet the financial requirements of  
16 this chapter, or has a material amount invested in, or  
17 has a material amount of receivables due from, the  
18 related party.

19 **PART IX. NOTIFICATION REQUIREMENTS**



1           §   -100   **Notifications to commissioner and residents.**   A  
2 provider shall notify the commissioner and all residents in  
3 writing within ten business days whenever any of the following  
4 apply:

5           (1) The provider fails to maintain the operating reserve  
6                 required pursuant to part XI of this chapter;

7           (2) The provider, or any obligated group of which the  
8                 provider is a member, violates or seeks modification,  
9                 waiver, or extension of any material covenant or  
10                material payment terms contained in any debt  
11                agreement;

12          (3) The provider has any entrance fee refunds that become  
13                 more than thirty days contractually past due;

14          (4) The provider plans to reduce the number of any type of  
15                 living unit by twenty per cent or more. The  
16                 notification shall include a statement describing the  
17                 reasons for the reduction and the effect, if any, on  
18                 residents and the financial condition of the provider.

19                 For the purposes of this paragraph, the percentage



1 shall be based on the type of living unit being  
2 reduced;

3 (5) The provider makes any change to its name, or the name  
4 of a continuing care retirement community operated by  
5 the provider in the State, including the adoption of  
6 an assumed business name; or

7 (6) Any proceeding for denial, suspension, or revocation  
8 of any license or permit needed to operate all or part  
9 of a continuing care retirement community in the  
10 State.

11 **§ -101 Material changes or deviations in information.**

12 (a) An applicant or provider shall notify the commissioner of  
13 material changes or deviations in any information submitted to  
14 the commissioner pursuant to this chapter within ten business  
15 days after the applicant or provider becomes aware of the change  
16 or deviation.

17 (b) Within thirty days after receiving notice of a  
18 material change or deviation, the commissioner shall advise the  
19 applicant or provider in writing whether any additional action



1 needs to be taken as a result of the material change or  
2 deviation.

3 (c) The commissioner may suspend any approval,  
4 certification, license, or permit issued pursuant to this  
5 chapter if the applicant or provider fails to give written  
6 notice of material changes or deviations required by this  
7 section. The suspension shall remain in effect until the  
8 commissioner has:

- 9 (1) Assessed the potential impact of the material changes  
10 or deviations on the applicant or provider and the  
11 interests of residents and depositors; and  
12 (2) Taken any action necessary under this chapter to  
13 protect the interests of any residents and depositors.

14 (d) For the purposes of this section, material changes or  
15 deviations mean any change or extraordinary occurrence which  
16 creates or causes, or could create or cause, an applicant or  
17 provider to be in a hazardous condition or, for a proposed  
18 continuing care retirement community or proposed expansion of a  
19 continuing care retirement community, to no longer be  
20 financially viable.



1                   **PART X. OTHER TRANSACTIONS AND CHANGES**

2           §   -110   **Purchase, sale, or transfer of ownership interest**  
3 **in the real property of a continuing care retirement community.**

4   (a) No permit, certificate, or license issued pursuant to this  
5 chapter is transferable, and no permit, certificate, or license  
6 issued pursuant to this chapter has value for sale or exchange  
7 as property.

8   (b) A provider or any other person who owns the real  
9 property used in the operations of a continuing care retirement  
10 community shall obtain approval from the commissioner before  
11 consummating any sale or transfer of any real property used in  
12 the operations of a continuing care retirement community,  
13 including a sale-leaseback transaction, or any interest in a  
14 continuing care retirement community, other than the sale of an  
15 independent living unit to a resident or other transferee.

16   (c) A provider shall obtain approval from the commissioner  
17 before consummating any purchase of real property currently  
18 leased and used by the provider in the operations of a  
19 continuing care retirement community; provided that any purchase  
20 option to be entered into by the provider that requires a



1 purchase option deposit shall only be entered into if the  
2 deposit is placed in an escrow account or secured in another  
3 method acceptable to the commissioner.

4 (d) A provider shall request approval of any transaction  
5 listed in subsection (b) or (c) by filing a request for approval  
6 with the commissioner, made under oath or affirmation, at least  
7 forty-five days before consummating the transaction. The  
8 request for approval required by this subsection shall include:

- 9 (1) The identity and description of the persons involved  
10 in the transaction;
- 11 (2) A description of the transaction and the terms of the  
12 transaction;
- 13 (3) A description of the financial impact on the  
14 applicant;
- 15 (4) If applicable, a plan for ensuring performance of  
16 existing continuing care and continuing care at home  
17 contract obligations; and
- 18 (5) Any other information reasonably required by the  
19 commissioner.



1 (e) The commissioner shall comply with the review schedule  
2 in section -24 in response to a request for approval pursuant  
3 to this section.

4 (f) The commissioner shall approve a request for approval  
5 if the following requirements are met:

6 (1) The request complies with this section;

7 (2) None of the grounds for denial listed in section -  
8 131 apply to the applicant; and

9 (3) The transaction does not jeopardize the financial  
10 stability of the applicant or prejudice the interest  
11 of residents.

12 (g) A provider shall give written notice to all affected  
13 residents and depositors of the proposed transaction within ten  
14 business days after receiving approval from the commissioner.

15 (h) The commissioner may revoke or restrict the  
16 certificate or license of a provider or take other  
17 administrative action pursuant to part XII of this chapter if a  
18 provider violates the provisions of this section.

19 § -111 **Change of control of a provider.** (a) No person  
20 shall enter into an agreement to merge with, or to otherwise



1 acquire control of, a provider holding a certificate or license  
2 under this chapter unless the transaction is approved by the  
3 commissioner. To obtain the commissioner's approval, the  
4 acquiring person shall file a request for approval with the  
5 commissioner.

6 (b) The request for approval required by this section  
7 shall be in a form prescribed by the commissioner, made under  
8 oath or affirmation, and shall contain:

9 (1) The name and address of each acquiring person and the  
10 following additional information regarding those  
11 persons:

12 (A) If the person is not an individual, a report of  
13 the nature of its business operations during the  
14 past five years or for a lesser period as the  
15 person and any predecessors have been in  
16 existence;

17 (B) A description of the business intended to be done  
18 by the person and the person's related parties;

19 (C) A list of all individuals who are or who have  
20 been selected to become directors or executive



1           officers of the person, or who perform or will  
2           perform functions appropriate to those positions;  
3           and

4           (D) For each individual listed pursuant to this  
5           paragraph, the person's principal occupation and  
6           all offices and positions held during the past  
7           five years and any conviction of crimes other  
8           than minor traffic violations during the past ten  
9           years;

10          (2) The source, nature, and amount of the consideration  
11          used or to be used in effecting the merger or other  
12          acquisition of control; a description of any  
13          transaction wherein funds were or are to be obtained  
14          for that purpose, including any pledge of the  
15          provider's stock, or the stock of any of its  
16          subsidiaries or controlling persons; and the identity  
17          of persons providing the consideration;

18          (3) Fully audited financial information as to the earnings  
19          and financial condition of each acquiring person for  
20          the preceding five fiscal years, or for a lesser



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- 1           period as the acquiring person and any predecessors  
2           have been in existence, and similar unaudited  
3           information as of a date not earlier than ninety days  
4           before the filing of the written notice;
- 5       (4) Any plans or proposals that each acquiring person may  
6           have to liquidate the provider, or any continuing care  
7           retirement community operated by the provider in the  
8           State, to sell its assets or merge or consolidate it  
9           with any person, or to make any other material change  
10          in its business or corporate structure or management;
- 11       (5) A description of the effect, if any, that the merger  
12          or other acquisition of control will have on the  
13          financial condition of the provider;
- 14       (6) A description of any change in the provision of goods  
15          and services to the provider and residents;
- 16       (7) A description of any agreements made or to be made  
17          with residents which will amend any continuing care or  
18          continuing care at home contract at the time of the  
19          transfer of control;



1 (8) A description of any service or contractual obligation  
2 with residents which will change as a result of the  
3 change in control; and

4 (9) Any additional information as the commissioner may  
5 require as necessary or appropriate for the protection  
6 of residents or in the public interest.

7 (c) The commissioner shall comply with the review schedule  
8 in section -24 in response to a request for approval pursuant  
9 to this section.

10 (d) The commissioner shall approve a request for approval  
11 pursuant to this section if the following requirements are met:

12 (1) The request for approval complies with this section;

13 (2) None of the grounds for denial listed in section -  
14 131 apply to the applicant;

15 (3) After the change of control, the provider will be able  
16 to satisfy the certification or licensure  
17 requirements, as applicable, of this chapter;

18 (4) The financial condition of any acquiring person will  
19 not jeopardize the financial stability of the provider  
20 or prejudice the interest of any residents;



1           (5) Any plans or proposals that any acquiring person has  
2           to liquidate the provider, or any continuing care  
3           retirement community operated by the provider in the  
4           State, sell its assets or consolidate or merge it with  
5           any person, or to make any other material change in  
6           its business or corporate structure or management, are  
7           fair and reasonable to residents and in the public  
8           interest; and

9           (6) The competence, experience, and integrity of those  
10          persons who would control the operation of the  
11          provider are such that the change of control will not  
12          harm the interests of residents or of the public.

13          (e) A provider shall give written notice to all affected  
14          residents and depositors of the proposed merger or other  
15          acquisition of control within ten business days after the  
16          acquiring person has received approval from the commissioner.

17          (f) The commissioner may revoke or restrict the license or  
18          certificate of a provider or take other administrative action  
19          pursuant to part XII of this chapter if a provider violates the  
20          provisions of this section.



1           §    -112 **Third-party management.** (a) A provider shall  
2 request the approval of the commissioner before entering into a  
3 contract with a third party for the management of a continuing  
4 care retirement community; provided that the request for  
5 approval shall include a copy of the proposed management  
6 contract, the information required by paragraphs (6) and (7) of  
7 section     -61(a) regarding the proposed third-party manager, a  
8 description of the third party's experience in managing  
9 continuing care retirement communities, and the reason for the  
10 change in management.

11           (b) The provider shall inform all residents in writing of  
12 the request for approval submitted to the commissioner pursuant  
13 to this section within ten business days after the request for  
14 approval is submitted to the commissioner.

15           (c) The commissioner shall comply with the review schedule  
16 in section     -24 in response to a request for approval pursuant  
17 to this section.

18           (d) The commissioner may disapprove of the request for  
19 approval if the commissioner determines either of the following:



1           (1) The proposed third-party manager is incompetent or  
2           untrustworthy or so lacking in managerial experience  
3           as to make the operation of the continuing care  
4           retirement community potentially hazardous to  
5           residents; or

6           (2) The proposed third-party manager is affiliated  
7           directly or indirectly through ownership, control, or  
8           business relations with any person or persons whose  
9           business operations are or have been marked by  
10          manipulation of assets or accounts or by bad faith, to  
11          the detriment of residents, members, stockholders,  
12          investors, creditors, or the public.

13          (e) The provider shall remove any third-party manager  
14 immediately upon discovery of either of the following:

15          (1) That a manager has been convicted of any felony or  
16          pleaded nolo contendere to a felony charge or has been  
17          held liable or enjoined in a civil action by final  
18          judgment involving fraud, embezzlement, fraudulent  
19          conversion, or misappropriation of property; or



1 (2) That a manager is now, or was in the past, affiliated  
2 directly or indirectly through ownership interest of  
3 ten per cent or more in, or control of, any business,  
4 corporation, or other entity that has been convicted  
5 of any felony or pleaded nolo contendere to a felony  
6 charge or has been held liable or enjoined in a civil  
7 action by final judgment involving fraud,  
8 embezzlement, fraudulent conversion, or  
9 misappropriation of property.

10 **PART XI. OPERATING RESERVE**

11 § -120 **Operating reserve requirement.** (a) A provider  
12 shall maintain after the opening of a continuing care retirement  
13 community an operating reserve equal to fifty per cent of the  
14 total operating costs of the continuing care retirement  
15 community forecasted or projected for the twelve-month period  
16 following the period covered by the most recent disclosure  
17 statement filed with the commissioner.

18 (b) Once a continuing care retirement community achieves a  
19 twelve-month daily average independent living unit occupancy  
20 rate of ninety per cent or higher, a provider shall only be



1 required to maintain an operating reserve in an amount  
 2 calculated using the table below, unless otherwise instructed by  
 3 the commissioner:

4	Twelve-month daily average	Operating reserve
5	independent living unit	requirement as a percentage
6	occupancy rate:	of total operating costs
7		of the continuing care:
8	90.0% or above	25.00%
9	86.0% to 89.9%	31.25%
10	83.0% to 85.9%	37.50%
11	80.0% to 82.9%	43.75%
12	Below 80.0%	50.00%

13 (c) A provider who has a twelve-month daily average  
 14 independent living unit occupancy rate equal to or in excess of  
 15 ninety-three per cent and has no long-term debt or a debt  
 16 service coverage ratio in excess of 2.00 as of the provider's  
 17 most recent fiscal year-end shall only be required to maintain  
 18 an operating reserve equal to 12.5 per cent of total operating  
 19 costs of the continuing care retirement community, unless  
 20 otherwise instructed by the commissioner.



1 (d) The commissioner may increase the amount a provider is  
2 required to maintain as its operating reserve, not to exceed  
3 fifty per cent of total operating costs as calculated in  
4 accordance with section -121, for a continuing care  
5 retirement community operated by the provider or require that a  
6 provider immediately place the operating reserve on deposit with  
7 the commissioner if the commissioner has determined that the  
8 provider is in a hazardous condition pursuant to section -  
9 132.

10 (e) A provider shall notify all residents in writing  
11 within ten business days if the commissioner, pursuant to  
12 subsection (d), increases the amount a provider is required to  
13 maintain as its operating reserve for a continuing care  
14 retirement community operated by the provider or requires the  
15 operating reserve to be placed on deposit with the commissioner.

16 (f) If the commissioner requires a provider to place an  
17 operating reserve on deposit with the commissioner, the provider  
18 shall at the same time deliver to the commissioner a power of  
19 attorney executed by the provider's president and secretary, or  
20 other proper person or persons, authorizing the sale or transfer



1 of said qualifying assets, or any part, for the purpose of  
2 paying any of the liabilities of the provider related to the  
3 continuing care retirement community for which the operating  
4 reserve is maintained.

5       §   -121   **Operating reserve calculation.**   (a) The five-  
6 year prospective financial statements as required by  
7 section   -61(a)(37), together with the twelve-month daily  
8 average independent living unit occupancy rate of the continuing  
9 care retirement community, shall serve as the basis for  
10 computing the operating reserve; provided that a provider shall  
11 calculate and adjust, if necessary, the required operating  
12 reserve on at least a semiannual basis, including the date the  
13 operating reserve is certified in accordance with section   -  
14 125.

15       (b) In addition to total operating expenses, total  
16 operating costs shall include debt service, consisting of  
17 principal and interest payments, along with taxes and insurance  
18 on any mortgage loan or other long-term financing, but will  
19 exclude depreciation, amortized expenses, and extraordinary  
20 items as approved by the commissioner ;provided that if the debt



1 service portion is accounted for by way of another reserve  
2 account, the debt service portion may be excluded upon  
3 satisfactory evidence of the existence and purpose of the other  
4 reserve account.

5 (c) A provider shall apply in writing for a determination  
6 by the commissioner to exclude extraordinary items from total  
7 operating costs and shall provide documentation to support the  
8 request. The commissioner shall comply with the review schedule  
9 in section -24 in response to a request for approval pursuant  
10 to this subsection.

11 (d) For providers that have voluntarily and permanently  
12 discontinued entering continuing care contracts, or who operate  
13 a continuing care retirement community where not all occupants  
14 are under continuing care contracts, the commissioner may allow  
15 a reduced operating reserve if the commissioner finds that the  
16 reduction is consistent with the financial protections imposed  
17 by this chapter. In making this determination, the commissioner  
18 may consider factors including the financial condition of the  
19 provider, the number of outstanding continuing care contracts,  
20 the ratio of persons under continuing care contracts to those



1 persons who do not hold a continuing care contract, and the  
2 twelve-month daily average independent living unit occupancy  
3 rate.

4 (e) A provider who has increased the number of independent  
5 living units available at a continuing care retirement community  
6 more than twenty per cent shall be allowed to exclude the total  
7 number of independent living units in the expansion project for  
8 a period of eighteen months after the independent living units  
9 become available for occupancy when computing the operating  
10 reserve required by this part.

11 (f) The commissioner may allow a different calculation for  
12 a provider's required operating reserve for a continuing care  
13 retirement community operated by the provider if the  
14 calculation, in the opinion of the commissioner, does not  
15 diminish the residents' protections provided for by this part.

16 § -122 **Qualifying assets.** (a) A provider shall fund  
17 its operating reserve with any of the following qualifying  
18 assets:

- 19 (1) Cash;  
20 (2) Cash equivalents; or



1           (3) Investment grade securities. For the purposes of this  
2 paragraph, investment grade securities are any of the  
3 following:

4           (A) Securities issued or directly and fully  
5 guaranteed or insured by the government of the  
6 United States of America or any of its agencies  
7 or instrumentalities;

8           (B) Debt securities or debt instruments with a rating  
9 of BBB- or higher by Standard & Poor's or Baa3 or  
10 higher by Moody's, or, if no rating of Standard &  
11 Poor's or Moody's then exists, the equivalent of  
12 that rating by any other nationally recognized  
13 statistical rating organizations maintained by  
14 the National Association of Insurance  
15 Commissioners; or

16           (C) Investments in any fund that invests exclusively  
17 in investments of the type described in  
18 subparagraph (A) or (B), which fund may also hold  
19 immaterial amounts of cash pending investment or  
20 distribution;



1           (4) Corporate stock that is traded on a public securities  
2           exchange that can be readily valued and liquidated for  
3           cash, including shares in mutual funds and exchange-  
4           traded funds that hold portfolios consisting  
5           predominantly of these stocks; and

6           (5) Other assets considered to be acceptable to the  
7           commissioner on a case-by-case basis.

8           (b) Except as otherwise provided in this subsection, the  
9           assets maintained by the provider as an operating reserve for a  
10          continuing care retirement community operated by the provider  
11          under this chapter shall not be subject to any liens, charges,  
12          judgments, garnishments, or creditors' claims and shall not be  
13          hypothecated, pledged as collateral, or otherwise encumbered in  
14          any manner. A provider may encumber assets held as an operating  
15          reserve as part of a security pledge of assets or similar  
16          collateralization that is part of the provider's debt financing  
17          and is included in the provider's debt indenture security  
18          instruments related thereto or other similar instrument.

19          (c) For the purpose of calculating the amount to be  
20          maintained by the provider to satisfy its operating reserve



1 requirement, all qualifying assets shall be valued at their  
2 current fair market value.

3       §   -123   **Surety bond; letter of credit.**   (a) In lieu of  
4 funding the operating reserve with qualifying assets as set  
5 forth in section   -122, a provider may fund all or a portion  
6 of the operating reserve required by this part by filing with  
7 the commissioner a surety bond or letter of credit as set forth  
8 in this section.

9       (b) A surety bond shall be in a form acceptable to the  
10 commissioner and issued by an insurer authorized by the  
11 commissioner to write surety business in the State. The  
12 following shall apply to surety bonds issued pursuant to this  
13 chapter:

14       (1) The surety bond may be exchanged or replaced with  
15 another surety bond if:

16           (A) The surety bond applies to obligations and  
17 liabilities that arose during the period of the  
18 original surety bond;

19           (B) The surety bond meets the requirements of this  
20 section; and



1 (C) Ninety days' advance written notice is provided  
2 to the commissioner;

3 (2) Notice of cancellation or nonrenewal of the surety  
4 bond required by this section shall be provided to the  
5 provider and the commissioner in writing at least  
6 forty-five days before cancellation or nonrenewal; and

7 (3) A surety bond may be canceled by the issuer of the  
8 bond with respect to future obligations or liabilities  
9 upon proper notice pursuant to this section and  
10 without regard to approval or acceptance of the  
11 commissioner.

12 (c) A provider may file a clean, irrevocable,  
13 unconditional letter of credit issued or confirmed by a  
14 qualified United States financial institution as defined in  
15 section 431:4A-103, naming the commissioner as beneficiary;  
16 provided that the terms of the letter of credit shall be  
17 approved by the commissioner before issuance and before its  
18 renewal or modification; provided further that the letter of  
19 credit shall provide the following information:



1 (1) Ninety days' prior written notice to both the provider  
2 and the commissioner of the financial institution's  
3 determination not to renew or extend the term of the  
4 letter of credit;

5 (2) Unless otherwise arranged by the provider to the  
6 satisfaction of the commissioner, deposit by the  
7 financial institution of letter of credit funds in an  
8 account designated by the commissioner no later than  
9 thirty days before the expiration of the letter of  
10 credit; and

11 (3) Deposit by the financial institution of letter of  
12 credit funds in an account designated by the  
13 commissioner within five business days following  
14 written instructions from the commissioner that, in  
15 the sole judgment of the commissioner, funding of the  
16 operating reserve is required.

17 § -124 **Operating reserve release.** (a) An operating  
18 reserve shall only be released, in whole or in part, upon the  
19 submittal of a detailed request from the provider and approval  
20 of that request by the commissioner This request shall be



1 submitted in writing for the commissioner to review at least ten  
2 business days before the proposed date of release.

3 (b) To receive the approval of the commissioner, a  
4 provider shall explain why a release is necessary and, if  
5 applicable, submit a repayment schedule to replenish the  
6 operating reserve to the amount required by section -120.  
7 Within five business days after the date a request is deemed  
8 complete, the commissioner shall provide the provider with a  
9 written notice of approval or disapproval of the request. The  
10 commissioner may disapprove any request to release the funds if  
11 it is determined that the release is not in the best interest of  
12 residents.

13 (c) A provider shall give written notice to residents of  
14 any request made pursuant to subsection (a) at the same time the  
15 written request is submitted to the commissioner.

16 § -125 **Operating reserve certification.** At the time a  
17 provider files its annual audited financial statements pursuant  
18 to section -90, a provider shall file a form acceptable to  
19 the commissioner computing, reporting, and certifying:



- 1           (1) The twelve-month daily average independent living unit
- 2           occupancy rate at the continuing care retirement
- 3           community, or a shorter period of time that the
- 4           continuing care retirement community has been in
- 5           operation, as of the date of certification;
- 6           (2) The amount the provider is required to hold as its
- 7           operating reserve; and
- 8           (3) A description of the qualifying assets or other form
- 9           of security and, if applicable, their respective
- 10          values, as defined and valued in accordance with
- 11          section -122, that the provider maintains for its
- 12          operating reserve.

13                           **PART XII. OFFENSES AND PENALTIES**

14          §   -130   **Definition of impairment.** As used in this part,

15   "impaired" means a weakened financial state or condition that

16   may affect a provider's ability to pay its obligations as they

17   come due in the normal course of business.

18          §   -131   **Grounds for discretionary refusal, restriction,**

19   **or revocation of a permit, certificate, or license.** (a) The

20   commissioner may deny an application or any other request for



1 approval or restrict or revoke any permit, certificate, license,  
2 or other authorization issued under this chapter if the  
3 commissioner finds that the applicant or provider:

4 (1) Wilfully violated any provision of this chapter or of  
5 any rule or order of the commissioner;

6 (2) Made a material omission, misstatement, or  
7 misrepresentation, or committed fraud in obtaining a  
8 permit, certificate, license, or other authorization;

9 (3) Engaged in any fraudulent or dishonest practices in  
10 the conduct of its business;

11 (4) Misappropriated, converted, or improperly withheld any  
12 monies;

13 (5) Failed to file an annual disclosure statement, annual  
14 audited financial statements, or any other materials  
15 requested by the commissioner or otherwise required by  
16 this chapter;

17 (6) Failed to deliver to prospective residents a  
18 disclosure statement as required by this chapter;

19 (7) Delivered to prospective residents a disclosure  
20 statement that makes a material misstatement or omits



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- 1 a material fact and the provider, at the time of the  
2 delivery of the disclosure statement, had actual  
3 knowledge of the misstatement or omission;
- 4 (8) Failed to make a revised disclosure statement  
5 available to residents;
- 6 (9) Made any material misrepresentations to depositors,  
7 prospective residents, or residents of a continuing  
8 care retirement community operated or to be operated  
9 in the State;
- 10 (10) Failed to maintain the escrow account required under  
11 this chapter or released a portion of an escrow  
12 account required to be maintained under this chapter;
- 13 (11) Failed to deposit entrance fees and deposits into an  
14 escrow account as required by this chapter;
- 15 (12) Failed to maintain the operating reserve required  
16 under this chapter or released a portion of the  
17 operating reserve required to be maintained under this  
18 chapter without commissioner approval;
- 19 (13) Violated a restriction of its permit, certificate, or  
20 license;



- 1           (14) After request by the commissioner for an investigation  
2           or examination, refused access to records or  
3           information; refused to be investigated or examined or  
4           to produce its accounts, records, and files for an  
5           investigation or examination; refused to give  
6           information with respect to its affairs; or refused to  
7           perform any other legal obligations related to an  
8           investigation or examination;
- 9           (15) Failed to fulfill obligations under continuing care  
10          and continuing care at home contracts;
- 11          (16) Violated the provisions of section     -110,     -111,  
12          or     -112;
- 13          (17) Failed to comply with the terms of a cease-and-desist  
14          order; or
- 15          (18) Has been determined by the commissioner to be in a  
16          hazardous condition.
- 17          (b) Findings of fact in support of a denial, restriction,  
18 or revocation shall be accompanied by an explicit statement of  
19 the commissioner's understanding of the underlying facts  
20 supporting the findings.



1 (c) If the commissioner has good cause to believe that a  
2 provider has committed a violation for which revocation could be  
3 ordered, the commissioner may first issue a cease-and-desist  
4 order. If the cease-and-desist order is not or cannot be  
5 effective in remedying the violation, the commissioner may,  
6 after notice and hearing, order that a permit, certificate, or  
7 license be revoked. That revocation order may be appealed  
8 pursuant to chapter 91. The provider shall accept no new  
9 deposits or entrance fees while the revocation order is under  
10 appeal.

11 (d) If the commissioner issues a cease-and-desist order or  
12 restricts or revokes a provider's permit, certificate, or  
13 license, the provider shall notify all residents and depositors  
14 of the cease-and-desist order, restriction, or revocation within  
15 five business days.

16 (e) The commissioner may, upon finding of changed  
17 circumstances, remove a restriction.

18 (f) The revocation by the commissioner of a certificate or  
19 license shall not release the provider from obligations assumed  
20 through continuing care and continuing care at home contracts.



1           (g) Within twenty business days after receiving a notice  
2 of revocation of a license, a provider shall provide to the  
3 commissioner and all residents a written plan detailing  
4 specifically how the provider intends to continue to meet its  
5 continuing care obligations.

6           (h) A provider who has their permanent license revoked  
7 shall continue to maintain an operating reserve and to file its  
8 annual audited financial statements, annual disclosure  
9 statement, and pay annual fees to the commissioner as required  
10 under this chapter as if the permanent license had continued in  
11 full force, but the provider shall not issue any new continuing  
12 care or continuing care at home contracts.

13           (i) A provider who has a permit, certificate, or license  
14 revoked shall provide written notice within five business days  
15 to all depositors, shall reimburse all deposits collected, and  
16 shall provide documentation to the commissioner verifying that  
17 all deposits have been returned to depositors.

18           § -132 **Hazardous condition.** The commissioner may  
19 consider any of the following standards to determine whether a  
20 provider is in a hazardous condition:



- 1 (1) Whether the provider is impaired or insolvent;
- 2 (2) Adverse findings reported in examination reports,  
3 audit financial statements, and actuarial opinions,  
4 reports, or summaries;
- 5 (3) Whether the provider has failed to establish,  
6 maintain, or has substantially depleted the operating  
7 reserve required by this chapter;
- 8 (4) Whether the provider is contractually past due on  
9 entrance fee refunds;
- 10 (5) The age and collectability of receivables;
- 11 (6) Whether a related party is impaired, insolvent,  
12 bankrupt, or threatened with insolvency or bankruptcy,  
13 or delinquent in payment of its monetary or any other  
14 obligations and which in the opinion of the  
15 commissioner may affect the solvency of the provider;
- 16 (7) Whether the provider, or any obligated group that the  
17 provider is a part of, is not in compliance with any  
18 covenant contained in any debt agreement;
- 19 (8) Whether the provider is aware of any existing  
20 circumstances which would hinder or cause the



1 provider, or any member of an obligated group that the  
2 applicant or provider is a part of, to not be able to  
3 perform on any debt agreement;

4 (9) Contingent liabilities, pledges, or guaranties that  
5 either individually or collectively involve a total  
6 amount that in the commissioner's opinion may affect a  
7 provider's solvency;

8 (10) Whether the management of a provider, including  
9 officers, directors, or any other person who directly  
10 or indirectly controls the operations of an applicant,  
11 provider, or continuing care retirement community,  
12 fails to possess and demonstrate the competence,  
13 experience, or integrity considered by the  
14 commissioner to be necessary to serve the provider or  
15 continuing care retirement community in that position;

16 (11) Whether the management of a provider has failed to  
17 respond to the commissioner's inquiries about the  
18 condition of the applicant or provider or has  
19 furnished false and misleading information in response  
20 to an inquiry by the commissioner;



- 1           (12) Whether the applicant or provider has failed to meet  
2           financial, disclosure statement, or other filing  
3           requirements in the absence of a reason satisfactory  
4           to the commissioner;
- 5           (13) Whether the management of an applicant or provider has  
6           filed any false or misleading financial statement, has  
7           released a false or misleading financial statement to  
8           a lending institution or to the public, or has made a  
9           false or misleading entry or omitted an entry of  
10          material amount in the applicant's or provider's  
11          books;
- 12          (14) Whether the applicant or provider has experienced or  
13          will experience in the foreseeable future cash flow or  
14          liquidity problems; or
- 15          (15) Any other finding determined by the commissioner to be  
16          hazardous to the applicant's or provider's depositors,  
17          residents, creditors, or the public.
- 18          §    -133   **Corrective action plan.**   (a) If the commissioner  
19          has determined that a provider is in a hazardous condition, the  
20          commissioner may, in lieu of taking action under section    -131



1 or -150, and after notice and opportunity for hearing, issue  
2 an order requiring a provider to submit a corrective action plan  
3 within forty-five days and notify all residents and depositors  
4 within five business days of the commissioner's order. The  
5 corrective action plan shall include the following:

6 (1) Proposals of corrective actions the provider intends  
7 to take which would be expected to result in the  
8 elimination of the hazardous condition; and

9 (2) A date when the provider anticipates it will rectify  
10 the problems and deficiencies identified by the  
11 commissioner.

12 (b) Within forty-five days after the submittal of a  
13 corrective action plan, the commissioner shall notify the  
14 provider whether the corrective action plan shall be implemented  
15 or is, in the judgment of the commissioner, unsatisfactory. If  
16 the commissioner determines the corrective action plan is  
17 unsatisfactory, the notification to the provider shall set forth  
18 the reasons for the determination and may set forth proposed  
19 revisions that will render the corrective action plan  
20 satisfactory in the judgment of the commissioner. After



1 receiving notification from the commissioner, the provider shall  
2 prepare a revised corrective action plan, if applicable, which  
3 may incorporate by reference any revisions proposed by the  
4 commissioner and shall submit the revised corrective action plan  
5 to the commissioner within thirty days after notification from  
6 the commissioner. If the corrective action plan is approved,  
7 the provider shall immediately implement the corrective action  
8 plan, distribute a copy of the plan to all residents and  
9 depositors, and begin reporting to the commissioner on the  
10 implementation and progress of the corrective action plan in  
11 accordance with a schedule and in a format established by the  
12 commissioner. Each report shall also be distributed to all  
13 residents and depositors at the time the report is submitted to  
14 the commissioner.

15 (c) If the corrective action plan is disapproved, or if a  
16 corrective action plan is not submitted, the commissioner may  
17 engage consultants to develop a corrective action plan. After  
18 the corrective action plan is developed, the commissioner shall  
19 direct the provider to implement the corrective action plan and  
20 to distribute a copy of the corrective action plan to all



1 residents and depositors. Expenses incurred by the commissioner  
2 to engage consultants shall be paid by the provider.

3 (d) This section shall not be construed to delay or  
4 prevent the commissioner from taking any regulatory measures  
5 deemed necessary regarding the provider.

6 (e) The provider shall distribute its approved corrective  
7 action plan and its most recent report to the commissioner to a  
8 prospective resident at the time the provider distributes its  
9 current disclosure statement pursuant to section -62.  
10 Subsections (b) and (c) of section -62 shall apply to the  
11 corrective action plan and the most recent report to the  
12 commissioner required to be distributed pursuant to this  
13 subsection.

14 § -134 **Investigations and subpoenas.** (a) The  
15 commissioner may make public or private investigations within or  
16 outside of the State as necessary to:

- 17 (1) Determine whether any person has violated or is about  
18 to violate any provision of this chapter;  
19 (2) Aid in the enforcement of this chapter; or



1           (3) Verify statements contained in any disclosure  
2           statement or other filing filed or delivered under  
3           this chapter.

4           (b) For the purpose of any investigation or proceeding  
5 under this chapter, the commissioner may require or permit any  
6 person to file a statement in writing, under oath or otherwise,  
7 as to any of the facts and circumstances concerning the matter  
8 to be investigated.

9           (c) For the purpose of any investigation or proceeding  
10 under this chapter, the commissioner or the commissioner's  
11 designee may exercise all powers granted to the commissioner  
12 with respect to insurance companies.

13           § -135 **Civil liability.** (a) A provider who enters into  
14 a binding reservation agreement, continuing care contract, or  
15 continuing care at home contract under this chapter without  
16 having first delivered a disclosure statement meeting the  
17 requirements of part V of this chapter to the person with whom  
18 the binding reservation agreement, continuing care contract, or  
19 continuing care at home contract was entered into, or enters  
20 into a binding reservation agreement, continuing care contract,



1 or continuing care at home contract with a person who has relied  
2 on a disclosure statement that materially misrepresents or omits  
3 to state a material fact required to be stated therein or  
4 necessary in order to make the statements made therein, in light  
5 of the circumstances under which they are made, not misleading,  
6 shall be liable to that person for actual damages and repayment  
7 of all fees paid to the provider violating this chapter, less  
8 the costs of care, services, and housing provided to the  
9 resident by or on whose behalf the binding reservation  
10 agreement, continuing care contract, or continuing care at home  
11 contract was entered into prior to discovery of the violation,  
12 misstatement, or omission or the time the violation,  
13 misstatement, or omission should reasonably have been  
14 discovered, together with interest thereon at the legal rate for  
15 judgments, and court costs and reasonable attorneys' fees.

16 (b) Liability under this section exists regardless of  
17 whether the provider had actual knowledge of the misstatement or  
18 omission.

19 (c) A person may not file or maintain an action under this  
20 section if the person, before filing the action, received a



1 written offer of a refund of all amounts paid to the provider,  
2 together with interest at the rate established pursuant to  
3 section 478-2, less the cost of care, services, and housing  
4 provided prior to receipt of the offer, and if the offer recited  
5 the provisions of this section and the recipient of the offer  
6 failed to accept it within thirty days of actual receipt.

7 (d) An action may not be maintained to enforce a liability  
8 created under this chapter unless brought before the expiration  
9 of three years after the alleged violation.

10 § -136 **Criminal penalties.** (a) Any person who wilfully  
11 and knowingly violates any provision of this chapter is guilty  
12 of a misdemeanor. The commissioner may refer any available  
13 evidence concerning a violation of this chapter, or of any rule  
14 adopted or order issued pursuant to this chapter, to the  
15 attorney general or a prosecuting attorney, as defined in  
16 section 712A-1. The attorney general or a prosecuting attorney  
17 may institute the appropriate criminal proceedings under this  
18 chapter, with or without evidentiary referral from the  
19 commissioner. Nothing in this chapter limits the power of the



1 State to punish any person for any conduct that constitutes a  
2 crime under any other statute.

3 (b) Any action brought against any person shall not abate  
4 by reason of a sale or other transfer of ownership of the  
5 continuing care retirement community except with the express  
6 written consent of the commissioner.

7 § -137 **Forfeiture.** (a) A permit, certificate, license,  
8 or other approval issued by the commissioner pursuant to this  
9 chapter shall be forfeited, after notice and opportunity for  
10 hearing, when any one of the following occurs:

11 (1) The provider terminates marketing a proposed  
12 continuing care retirement community;

13 (2) The provider surrenders to the commissioner its  
14 permit, certificate, or license;

15 (3) The provider sells or otherwise transfers all or part  
16 of a continuing care retirement community without the  
17 commissioner's approval in accordance with  
18 section -110;



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- 1           (4) A change occurs in the control of the provider without  
2           the commissioner's approval in accordance with  
3           section     -111;
- 4           (5) The provider merges with another person without the  
5           commissioner's approval in accordance with  
6           section     -111;
- 7           (6) The provider moves the continuing care retirement  
8           community from one location to another without the  
9           commissioner's prior approval;
- 10          (7) The provider abandons the continuing care retirement  
11          community or its obligations under continuing care and  
12          continuing care at home contracts;
- 13          (8) The provider is evicted from the structures that make  
14          up the continuing care retirement community; or
- 15          (9) The provider closes a continuing care retirement  
16          community.
- 17          (b) The provider shall notify all residents and depositors  
18          within five business days after a forfeiture of a permit,  
19          certificate, or license.



1           §   -138 Remedies available in cases of unlawful  
2 **contracting.** (a) If the commissioner determines that a  
3 provider is or has been violating the provisions of this  
4 chapter, the commissioner may, after notice and opportunity for  
5 hearing, order the provider to cease entering into binding  
6 reservation agreements, continuing care contracts, and  
7 continuing care at home contracts and make a rescission offer to  
8 any resident or depositor who entered into a binding reservation  
9 agreement, continuing care contract, or continuing care at home  
10 contract while the provider was violating the provisions of this  
11 chapter in accordance with the provisions of this section.

12           (b) After the commissioner issues an order pursuant to  
13 subsection (a), every binding reservation agreement, continuing  
14 care contract, or continuing care at home contract entered into  
15 in violation of this chapter may be rescinded at the election of  
16 the resident or depositor without penalty.

17           (c) No resident or depositor shall have the benefit of  
18 this section who, within thirty days of receipt, has refused or  
19 failed to accept an offer made in writing by the provider to  
20 rescind the binding reservation agreement, continuing care



1 contract, or continuing care at home contract in question and to  
2 refund the full amount paid by the resident or depositor with  
3 interest at the rate established pursuant to section 478-2 on  
4 the full amount paid for the binding reservation agreement,  
5 continuing care contract, or continuing care at home contract  
6 for the period from the date of payment by the depositor or  
7 resident to the date of repayment, less the cost of care,  
8 services, and housing provided, if applicable, and the amount of  
9 any costs specifically incurred by the provider at the request  
10 of the resident or depositor and set forth in writing, signed by  
11 both parties to the binding reservation agreement, continuing  
12 care contract, or continuing care at home contract.

13 § -139 **Nonexclusive remedies.** The civil, criminal, and  
14 administrative remedies available to the commissioner pursuant  
15 to this chapter are not exclusive and may be sought and employed  
16 by the commissioner, in any combination, to enforce this  
17 chapter.

18 § -140 **Soliciting or accepting new agreements or**  
19 **contracts by impaired or insolvent providers.** Regardless of  
20 whether delinquency proceedings as to a provider have been or



1 are to be initiated, a provider may not actively solicit,  
2 approve the solicitation of, or enter into new binding  
3 reservation agreements, continuing care contracts, or continuing  
4 care at home contracts in the State after the provider knew, or  
5 reasonably should have known, that the provider was impaired or  
6 insolvent except with the written permission of the  
7 commissioner. The commissioner shall approve or disapprove the  
8 continued marketing of new binding reservation agreements,  
9 continuing care contracts, and continuing care at home contracts  
10 within fifteen days after receiving a request from a provider.  
11 If the provider has declared bankruptcy, the bankruptcy court or  
12 trustee appointed by the court has jurisdiction over those  
13 matters.

14 **PART XIII. DELINQUENCY PROCEEDINGS**

15 **§ -150 Supervision, rehabilitation, and liquidation.**

16 (a) The commissioner may commence a supervision proceeding  
17 pursuant to article 15 of chapter 431 or may apply to the  
18 circuit court of the first judicial circuit of the State for  
19 appropriate relief or to the federal bankruptcy court that may  
20 have previously taken jurisdiction over the provider or



1 continuing care retirement community for an order directing the  
2 commissioner or authorizing the commissioner to rehabilitate or  
3 liquidate a provider or continuing care retirement community in  
4 accordance with article 15 of chapter 431, if the commissioner  
5 determines, after notice and an opportunity for hearing, that  
6 any of the following apply:

- 7 (1) A portion of an escrow account or operating reserve  
8 required to be maintained under this chapter has been  
9 or is proposed to be released in violation of this  
10 chapter;
- 11 (2) A provider has been or will be unable to fully perform  
12 its obligations pursuant to continuing care and  
13 continuing care at home contracts, or to meet  
14 prospective financial data previously filed by the  
15 provider;
- 16 (3) A provider has failed to maintain the escrow account  
17 required under this chapter;
- 18 (4) A provider is in a hazardous condition; or
- 19 (5) A provider is bankrupt or insolvent, or in imminent  
20 danger of becoming bankrupt or insolvent.



1 (b) If the commissioner commences a supervision  
2 proceeding, the provider shall notify all residents and  
3 depositors of the proceeding within five business days.

4 (c) If an order is issued directing or authorizing the  
5 commissioner to rehabilitate or to liquidate a provider or  
6 continuing care retirement community, the commissioner shall  
7 notify all affected residents and depositors of the  
8 rehabilitation or liquidation order within five business days or  
9 as otherwise directed by the court.

10 (d) If, at any time, the court finds, upon petition of the  
11 commissioner, a provider, or on its own motion, that the  
12 objectives of an order to rehabilitate a provider have been  
13 accomplished and that the continuing care retirement community  
14 or communities owned by, or operated by, the provider can be  
15 returned to the provider's management without further jeopardy  
16 to the residents or depositors of the continuing care retirement  
17 community or communities, the court may, upon a full report and  
18 accounting of the conduct of the provider's affairs during the  
19 rehabilitation and of the provider's current financial  
20 condition, terminate the rehabilitation and, by order, return



1 the continuing care retirement community or communities owned  
2 by, or operated by, the provider, along with the assets and  
3 affairs of the provider, to the provider's management.

4 (e) When applying for an order to rehabilitate or  
5 liquidate a provider, the commissioner shall give due  
6 consideration in the application to the manner in which the  
7 welfare of persons who have contracted with the provider for  
8 continuing care may be best served.

9 (f) An order for rehabilitation shall be refused or  
10 vacated if the provider posts a bond, by a recognized surety  
11 authorized to do business in the State and executed in favor of  
12 the commissioner on behalf of persons who may be found entitled  
13 to a refund of entrance fees and deposits from the provider or  
14 other damages in the event the provider is unable to fulfill its  
15 contracts to provide continuing care, in an amount determined by  
16 the Court to be equal to the reserve funding that would  
17 otherwise need to be available to fulfill the provider's  
18 obligations.

19 § -151 **Receiverships; exception for long-term care**  
20 **facility beds.** When the commissioner has been appointed as a



1 receiver under article 15 of chapter 431 for a provider or a  
2 continuing care retirement community subject to this chapter,  
3 the department of health may, notwithstanding any other  
4 provision of law, accept and approve the addition of adult care  
5 home beds or nursing beds for a continuing care retirement  
6 community owned by, or operated by, the provider, if it appears  
7 to the court, upon petition of the commissioner or the provider,  
8 or on the court's own motion, that the best interests of the  
9 provider or the welfare of persons who have previously  
10 contracted with the provider or may contract with the provider  
11 may be best served by the addition of adult care home beds or  
12 nursing beds.

13       §    -152   **Contracts as preferred claims in liquidation.**

14       (a) In the event of liquidation of a provider, all continuing  
15 care and continuing care at home contracts executed by the  
16 provider shall be deemed preferred claims against all assets  
17 owned by the provider.

18       (b) Notwithstanding subsection (a), the claims of all  
19 continuing care and continuing care at home contracts shall be



1 subordinate to the liquidator's cost of administration or any  
2 secured claim.

3 **PART XIV. RESIDENTS' RIGHTS TO ORGANIZATION AND SEMIANNUAL**  
4 **MEETINGS**

5 § -160 **Definition of residents' council.** As used in  
6 this part, "residents' council" means a group duly elected by  
7 residents at a continuing care retirement community to advocate  
8 for residents' rights and to serve as a liaison between  
9 residents and the provider with respect to resident welfare and  
10 interests.

11 § -161 **Right to organization.** A resident living in a  
12 continuing care retirement community operated by a provider  
13 licensed under this chapter has the right of self-organization,  
14 the right to be represented by an individual of the resident's  
15 own choosing, and the right to engage in concerted activities to  
16 keep informed on the operation of the provider and the  
17 continuing care retirement community in which the resident  
18 resides or for other mutual aid or protection. The right to  
19 organize includes the right to establish a residents' council.

20 § -162 **Semiannual meetings.** (a) The board of directors



1 or other governing body of a provider or its designated  
2 representative shall hold in-person semiannual meetings with the  
3 residents of each continuing care retirement community operated  
4 by the provider in the State for free discussions of subjects,  
5 including but not limited to income, expenditures, financial  
6 trends and problems, and proposed changes in policies, programs,  
7 and services as they apply to the provider, the continuing care  
8 retirement community, and the continuing care retirement  
9 community's residents.

10 For the purposes of this section, a semiannual meeting  
11 shall be a single meeting that is open to all residents and not  
12 a series of meetings with individual residents. Nothing in this  
13 section shall prevent a provider from making a semiannual  
14 meeting available via electronic means to residents of the  
15 continuing care retirement community who are unable to attend in  
16 person.

17 (b) At least one independent member of the board of  
18 directors or other governing body of the provider shall attend  
19 the semiannual meetings in person. A provider may apply to the



1 commissioner for a waiver from the requirement of this  
2 subsection based on unique circumstances.

3 (c) Residents shall be entitled to at least seven days'  
4 advance notice of each meeting under subsection (a). The agenda  
5 and any materials that are distributed at the meetings shall  
6 remain available upon request to residents for at least 60 days  
7 after each semiannual meeting.

8 (d) Whenever a state of emergency or disaster has been  
9 proclaimed in the State or for an area within the State under  
10 section 127A-14, or whenever the President of the United States  
11 has issued a major disaster declaration for the State or for an  
12 area within the State under the Stafford Act, 42 United States  
13 Code section 5121 et seq., that directly affects the continuing  
14 care retirement community, semiannual meetings required under  
15 this section may be held by electronic means, including any of  
16 the following:

- 17 (1) Telephone;  
18 (2) Video conference; or  
19 (3) Video broadcast.



1 (e) If a semiannual meeting is held under subsection (d),  
2 notice of the method residents may use to attend the meeting  
3 shall be published with the notice of the meeting. The meeting  
4 shall be recorded in the format in which it is conducted.  
5 Acceptable recording formats include, but are not limited to:

- 6 (1) A sound-only recording;  
7 (2) A video recording with sound and picture; or  
8 (3) A digital or analog broadcast capable of being  
9 recorded.

10 (f) Recordings made pursuant to subsection (e) shall  
11 remain available to residents for at least sixty days after  
12 being made available to residents.

13 (g) A provider shall report in the disclosure statement  
14 required under section -61 the dates on which the semiannual  
15 meetings were held during the provider's previous fiscal year.

16 **PART XV. MISCELLANEOUS PROVISIONS**

17 § -170 **Waiver of statutory protection.** No act,  
18 agreement, or statement of any resident, or of an individual  
19 purchasing continuing care for a resident under any continuing  
20 care or continuing care at home contract shall constitute a



1 valid waiver of any provision of this chapter intended for the  
2 benefit or protection of the resident or the individual  
3 purchasing continuing care for the resident.

4 § -171 **Continuing Care Advisory Committee.** (a) There  
5 is established within the insurance division of the department  
6 of commerce and consumer affairs a twelve-member continuing care  
7 advisory committee comprised of providers, residents, and  
8 professionals involved in the continuing care retirement  
9 community industry. The members shall be appointed as follows:

10 (1) Six members appointed by the commissioner as follows:

11 (A) Two residents of continuing care retirement  
12 communities;

13 (B) One owner of a continuing care retirement  
14 community;

15 (C) One provider of continuing care at a continuing  
16 care retirement community or one provider of a  
17 continuing care at home program;

18 (D) One person who, on account of his or her  
19 vocation, employment, or affiliation, can be



1           classified as a representative of residents of  
2           continuing care retirement communities; and

3           (E) One person who, on account of their vocation,  
4           employment, or affiliation, can be classified as  
5           a representative of continuing care retirement  
6           communities;

7           (2) Three members appointed by the president of the senate  
8           as follows:

9           (A) One person who, on account of their vocation,  
10           employment, or affiliation, can be classified as  
11           a representative of residents of continuing care  
12           retirement communities;

13           (B) One person who, on account of their vocation,  
14           employment, or affiliation, can be classified as  
15           a representative of continuing care retirement  
16           communities; and

17           (C) One person who is a certified public accountant  
18           and is licensed to practice public accountancy in  
19           the State;



1           (3) Three members appointed by the speaker of the house of  
2           representatives as follows:

3           (A) One person who, on account of their vocation,  
4           employment, or affiliation, can be classified as  
5           a representative of residents of continuing care  
6           retirement communities;

7           (B) One person who, on account of their vocation,  
8           employment, or affiliation, can be classified as  
9           a representative of continuing care retirement  
10          communities; and

11          (C) One person who is a certified public accountant  
12          and is licensed to practice public accountancy in  
13          the State.

14          (b) The committee shall:

15          (1) Meet at least twice per year;

16          (2) Hold other meetings at times and places as the  
17          committee chair may direct;

18          (3) Act in an advisory capacity to the commissioner on  
19          matters pertaining to the operation and regulation of



1 continuing care retirement communities and continuing  
2 care at home programs;

3 (4) Report to the commissioner on developments in the  
4 continuing care retirement community industry,  
5 including continuing care at home and similar  
6 programs, and problems or concerns of providers and  
7 residents; and

8 (5) Recommend changes in relevant statutes and rules.

9 (c) The term of each committee member shall be three  
10 years, but each committee member shall serve until a successor  
11 has been appointed by the appointing authority. Committee  
12 members may serve two consecutive terms. Any appointment to  
13 fill a vacancy on the committee created by resignation,  
14 dismissal, death, or disability of a member shall be for the  
15 remainder of the unexpired term and filled by the appointing  
16 authority.

17 (d) Committee members shall serve without pay but shall be  
18 reimbursed for expenses, including travel expenses, necessary  
19 for the performance of their duties.



1           §    **-172 Other licensing or regulation.** (a) Nothing in  
2 this chapter shall affect the authority of the department of  
3 health or department of human services to license or regulate  
4 any long-term care facility.

5           (b) Continuing care retirement communities and providers  
6 licensed under this chapter that are subject to the provisions  
7 of chapter 514B shall not be subject to the provisions of  
8 chapter 651C; provided that the continuing care retirement  
9 community's declaration of condominium does not require the  
10 payment of any fee or charge not otherwise provided for in a  
11 resident's continuing care contract, or other separate contract  
12 for the provisions of membership or services.

13          §    **-173 Examination.** (a) The commissioner or the  
14 commissioner's designee may, in the commissioner's discretion,  
15 visit a provider offering continuing care in the State to  
16 examine its books and records. Expenses incurred by the  
17 commissioner in conducting examinations under this section shall  
18 be paid by the provider examined.

19          (b) The relevant provisions of chapter 431 apply to this  
20 chapter and are hereby incorporated by reference.



1 (c) If a provider relies on a contractual or financial  
2 relationship with another person to meet the financial  
3 requirements of this chapter, the commissioner or the  
4 commissioner's designee may examine the person that has a  
5 contractual or financial relationship with the provider to the  
6 extent necessary to ascertain the financial condition of the  
7 provider.

8 (d) A provider shall make a copy of the examination report  
9 issued by the commissioner available for inspection by all  
10 residents within ten business days after issuance."

11 SECTION 2. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 3. If any provision of this Act, or the  
15 application thereof to any person or circumstance, is held  
16 invalid, the invalidity does not affect other provisions or  
17 applications of the Act that can be given effect without the  
18 invalid provision or application, and to this end the provisions  
19 of this Act are severable.



1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:



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# S.B. NO. 3198

**Report Title:**

Insurance Commissioner; Insurance Division; Continuing Care Retirement Communities; Continuing Care At Home; Insurance; Regulation; Consumer Protection; Penalty; Continuing Care Advisory Committee

**Description:**

Establishes a regulatory framework for continuing care retirement communities and continuing care at home programs. Establishes the Continuing Care Advisory Committee.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

