

**§ 58-64-33. Operating reserves.**

(a) A provider shall maintain after the opening of a facility: an operating reserve equal to fifty percent (50%) of the total operating costs of the facility forecasted for the 12-month period following the period covered by the most recent disclosure statement filed with the Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as the basis for computing the operating reserve. In addition to total operating expenses, total operating costs will include debt service, consisting of principal and interest payments along with taxes and insurance on any mortgage loan or other long-term financing, but will exclude depreciation, amortized expenses, and extraordinary items as approved by the Commissioner. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. If a facility maintains an occupancy level in excess of ninety percent (90%), a provider shall only be required to maintain a twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserve may be funded by cash, by invested cash, or by investment grade securities, including bonds, stocks, U.S. Treasury obligations, or obligations of U.S. government agencies.

(b) A provider that has begun construction or has permanent financing in place or is in operation on the effective date of this section has up to five years to meet the operating reserve requirements.

(c) An operating reserve shall only be released upon the submittal of a detailed request from the provider or facility and must be approved by the Commissioner. Such requests must be submitted in writing for the Commissioner to review at least 10 business days prior to the date of withdrawal. (1991, c. 196, s. 5; c. 720, s. 89; 1993, c. 452, s. 64; 1993 (Reg. Sess., 1994), c. 678, s. 29; 1995, c. 193, s. 52; 2003-193, s. 8; 2004-203, s. 36.)