

§ 58-64-45. Supervision, rehabilitation, and liquidation.

(a) If, at any time, the Commissioner determines, after notice and an opportunity for the provider to be heard, that:

- (1) A portion of an entrance fee escrow account required to be maintained under this Article has been or is proposed to be released in violation of this Article;
- (2) A provider has been or will be unable, in such a manner as may endanger the ability of the provider, to fully perform its obligations pursuant to contracts for continuing care, to meet the forecasted financial data previously filed by the provider;
- (3) A provider has failed to maintain the escrow account required under this Article; or
- (4) A provider is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent;

the Commissioner may commence a supervision proceeding pursuant to Article 30 of this Chapter or may apply to the Superior Court of Wake County or to the federal bankruptcy court that may have previously taken jurisdiction over the provider or facility for an order directing the Commissioner or authorizing the Commissioner to rehabilitate or to liquidate a facility in accordance with Article 30 of this Chapter.

(b) The definition of "insolvency" or "insolvent" in G.S. 58-30-10(13) shall not apply to providers under this Article. Rules adopted by the Commissioner shall define and describe "insolvency" or "hazardous financial condition" for providers under this Article. G.S. 58-30-12 shall not apply to facilities under this Article.

(c) If, at any time, the Court finds, upon petition of the Commissioner or provider, or on its own motion, that the objectives of an order to rehabilitate a provider have been accomplished and that the facility or facilities owned by, or operated by, the provider can be returned to the provider's management without further jeopardy to the residents of the facility or facilities, the Court may, upon a full report and accounting of the conduct of the provider's affairs during the rehabilitation and of the provider's current financial condition, terminate the rehabilitation and, by order, return the facility or facilities owned by, or operated by, the provider, along with the assets and affairs of the provider, to the provider's management.

(d), (e) Repealed by Session Laws 1995 (Regular Session, 1996), c. 582, s. 3.

(f) In applying for an order to rehabilitate or liquidate a provider, the Commissioner shall give due consideration in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served.

(g) An order for rehabilitation shall be refused or vacated if the provider posts a bond, by a recognized surety authorized to do business in this State and executed in favor of the Commissioner on behalf of persons who may be found entitled to a refund of entrance fees from the provider or other damages in the event the provider is unable to fulfill its contracts to provide continuing care at the facility or facilities, in an amount determined by the Court to be equal to the reserve funding that would otherwise need to be available to fulfill such obligations. (1989, c. 758, s. 1; 1995 (Reg. Sess., 1996), c. 582, s. 3; 2003-193, s. 10.)