GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 196
HOUSE BILL 483

AN ACT TO MAKE IMPROVEMENTS IN THE FINANCIAL REGULATION OF CONTINUING CARE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-64-5(a) reads as rewritten:

"(a) No provider shall engage in the business of offering or providing continuing care in this State without a license to do so obtained from the Commissioner as provided in this Article. The licensing process may involve a series of steps pursuant to rules adopted by the Commissioner under this Article."

Sec. 2. G.S. 58-64-5 is amended by adding a new subsection to read:

"(g) The Commissioner may require a facility to: (i) provide the report of an actuary that estimates the capacity of the provider to meet its contractual obligation to the resident, or (ii) give consideration to expected rates of mortality and morbidity, expected refunds, and expected capital expenditures in accordance with standards promulgated by the American Academy of Actuaries, within the five-year forecast statements, as required by G.S. 58-64-20(a)(12)."

Sec. 3. G.S. 58-64-20(a)(11) through (14) read as rewritten:

"(11) ~~A summary of a report of an actuary, updated at least every five years, that estimates the capacity of the provider to meet its contractual obligation to the residents. Disclosure statements of continuing care facilities established prior to January 1, 1988, do not need an acturial report or summary until January 1, 1993.~~ In the event the facility has had an actuarial report prepared within the prior two years, the summary of a report of an actuary that estimates the capacity of the provider to meet its contractual obligations to the residents.

(12) ~~For proposed or development stage facilities, a statement of the anticipated sources and uses of funds, including but not limited to:~~

~~a. An estimate of the cost of the acquisition of the facility or, if the facility is to be constructed, an estimate of the cost of the acquisition of the land and construction cost of the facility;~~

~~b. An estimate of the marketing and resident acquisition costs to be incurred prior to commencement of operations;~~

~~c. An estimate of related costs such as financing fees, legal expenses, feasibility study fees and any other development costs which the provider anticipates to incur or become obligated for prior to the commencement of operations;~~

~~d. A description of any equity capital to be received by the facility;~~

~~e. A description of any long term financing for the purchase or construction of the facility;~~

~~f. An estimate of the total life occupancy fees to be received from or on behalf of, residents at, or prior to, commencement of operations;~~

~~g. A description of any other funding sources which the provider anticipates using to fund any start up losses or to provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care; and~~

~~h. Note disclosure detailing all significant assumptions used in the preparation of the statement of sources and uses of funds, including but not limited to: information regarding the requirements for the refund of residents life occupancy fees, if any, as required in the contracts for continuing care; a description of the provider's anticipated accounting method used in the recognition of revenue from life occupancy fees; all pertinent details of long term financing to include interest rate, repayment terms, and, if applicable, loan covenants; and all pertinent details regarding the financing costs and repayment terms of other financing sources.~~

Forecast financial statements for the facility of the next five years, including a balance sheet, a statement of operations, a statement of cash flows, and a statement detailing all significant assumptions, compiled by an independent certified public accountant. Reporting routine, categories, and structure may be further defined by regulations or forms adopted by the Commissioner.

(13) ~~Forecast statements of revenues and expenses and cash flows for the facility for each of the next five fiscal years, including but not limited to:~~

~~a. Detail of revenues and support to include the following categories as a minimum: members' residency charges, amortization of life occupancy fees, guests' meals and lodging, health center routine services, health center special services, health center adjustments and allowances, investment income, contributions for restricted projects and gifts and bequests;~~

~~b. Detail of operating expenses to include the following categories as a minimum: health center, dietary, housekeeping, maintenance, administration, development and marketing, depreciation, and interest; and~~

~~c. Note disclosure detailing all significant assumptions used in the preparation of the statements of revenues and expenses and cash~~

~~flows, including but not limited to: information regarding the requirements for the refund of residents' occupancy fees, if any, as required in the contracts for continuing care; a description of the provider's accounting method used in the recognition of revenue from life occupancy fees; a schedule of residency charges anticipated to be charged, including estimated occupancy percentages and the effect, if any, of government subsidies for health care services to be provided pursuant to the contracts for continuing care; all pertinent details of long term financing, to include interest rate, repayment terms, and, if applicable, loan covenants; an estimate of any reserves that might be required for the replacement of equipment or furnishings or anticipated major structural repairs or additions, and all pertinent details regarding the financing costs and repayment terms of other financing sources.~~

The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care.

(14) ~~The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care.~~ Proposed or development stage facilities shall additionally provide:

a. The summary of the report of an actuary estimating the capacity of the provider to meet its contractual obligation to the residents;

b. Narrative disclosure detailing all significant assumptions used in the preparation of the forecast financial statements, including:

1. Details of any long-term financing for the purchase or construction of the facility including interest rate, repayment terms, loan covenants, and assets pledged;

2. Details of any other funding sources that the provider anticipates using to fund any start-up losses or to provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;

3. The total life occupancy fees to be received from or on behalf of, residents at, or prior to, commencement of operations along with anticipated accounting methods used in the recognition of revenues from and expected refunds of life occupancy fees;

4. A description of any equity capital to be received by the facility;

5. The cost of the acquisition of the facility or, if the facility is to be constructed, the estimated cost of the

acquisition of the land and construction cost of the facility;

6. Related costs, such as financing any development costs that the provider expects to incur or become obligated for prior to the commencement of operations;

7. The marketing and resident acquisition costs to be incurred prior to commencement of operations; and

8. A description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services."

Sec. 4. G.S. 58-64-25(a) reads as rewritten:

"(a) Each contract for continuing care shall provide that:

(1) The party contracting with the provider may rescind the contract within 30 days following the later of the execution of the contract or the receipt of a disclosure statement that meets the requirements of this section, ~~in which event any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, shall be returned in full,~~ and the resident to whom the contract pertains is not required to move into the facility before the expiration of the 30-day period; and

(2) If a resident dies before occupying a living unit in the facility, or if, on account of illness, injury, or incapacity, a resident would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract is automatically ~~canceled~~ canceled; and ~~the resident or legal representative of the resident shall receive a refund of all money or property transferred to the provider, less (i) those nonstandard costs specifically incurred by the provider or facility at the request of the resident and described in the contract or an addendum thereto signed by the resident, and (ii) a reasonable service charge, if set out in the contract, not to exceed the greater of one thousand dollars ($1,000) or two percent (2%) of the entrance fee.~~

(3) For rescinded or canceled contracts under this section, the resident or the resident's legal representative shall receive a refund of all money or property transferred to the provider, less (i) periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident; (ii) those nonstandard costs specifically incurred by the provider or facility at the request of the resident and described in the contract or any contract amendment signed by the resident; (iii) nonrefundable fees, if set out in the contract; and (iv) a reasonable service charge, if set out in the contract, not to exceed the greater of one thousand dollars ($1,000) or two percent (2%) of the entrance fee."

Sec. 5. Article 64 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-64-33. Operating reserves.**

(a) All continuing care facilities shall maintain after opening: operating reserves equal to fifty percent (50%) of the total operating costs projected for the 12-month period following the period covered by the most recent annual 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. Facilities that maintain an occupancy level in excess of ninety percent (90%) shall only be required to maintain twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserves may be funded by liquid, marketable investments, including invested cash, bonds, stocks, commercial paper, U.S. Treasury obligations, other equivalents, or under G.S. 58-7-85(a)(1) through (6), or by an unconditional, irrevocable letter of credit of a quality satisfactory to the Commissioner.

(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) Operating reserves 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."

Sec. 6. G.S. 58-64-35 reads as rewritten:

"**§ 58-64-35. Escrow, collection of deposits.**

(a) Where escrow accounts are required by this Article, a ~~A~~ provider shall establish an escrow account with (i) a bank, (ii) a trust company, or (iii) another independent person or entity agreed upon by the provider and the ~~resident.~~ resident, unless such account arrangement is prohibited by the Commissioner. The terms of this escrow account shall provide that the total amount of any entrance ~~fee~~ fee, or any other fee or deposit that may be applied toward the entrance fee, received by the provider ~~prior to the date the resident is permitted to occupy a living unit in the facility~~ be placed in this escrow account. These funds may be released only as follows:

(1) ~~If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider when the living unit becomes available for occupancy by the new resident;~~ The first twenty-five percent (25%) of escrowed monies can be released when: (i) the provider has presold at least fifty percent (50%) of the independent living units, having received a minimum ten percent (10%) deposit on the presold units; (ii) the provider has

received a commitment for any permanent mortgage loan or other long-term financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and (iii) aggregate entrance fees received or receivable by the provider pursuant to binding continuing care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment are equal to not less than ninety percent (90%) of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent (90%) of the funds estimated in the statement of cash flows submitted by the provider as that part of the disclosure statement required by G.S. 58-64-20, to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care contracts.

(2) ~~If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be released to the provider when the escrow agent is satisfied that:~~

~~a. Construction or purchase of the living unit has been completed and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue such permits.~~

~~b. A commitment has been received by the provider for any permanent mortgage loan or other long-term financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and~~

~~c. Aggregate entrance fees received or receivable by the provider pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment are equal to not less than ninety percent (90% of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less estimated in the statement of cash flows submitted by the provider as that part of the disclosure statement required by G.S. 58-64-20, to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care retirement community contracts.~~

(2) The remaining seventy-five percent (75%) of escrowed monies can be released when:

a. (i) the provider has presold a minimum of seventy-five percent (75%) of the independent living units, having received a minimum ten percent (10%) deposit on the presold units, or has

maintained an independent living unit occupancy minimum of seventy-five percent (75%) for at least 60 days; (ii) construction or purchase of the independent living unit has been completed and an occupancy permit, if applicable, has been issued by the local government having authority to issue such permits; and (iii) the living unit becomes available for occupancy by the new resident; or

b. the provider submits a plan of reorganization that is accepted and approved by the Commissioner.

(b) Upon receipt by the escrow agent of a request by the provider for the release of these escrow funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of subsection (a) of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

(c) Release of any escrowed funds that may be due to the subscriber or resident shall occur upon: five working days notice of death, nonacceptance by the facility, or voluntary cancellation. If voluntary cancellation occurs after construction has begun, the refund may be delayed until a new subscriber is obtained for that specific unit, provided it does not exceed a period of two years.

~~(c)~~(d) If the provider fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, these funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

~~(d)~~(e) ~~An entrance fee held in escrow may be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee.~~ Facilities that currently meet the seventy-five percent (75%) presales or the seventy-five percent (75%) occupancy requirements, as outlined in G.S. 58-65-35(a)(2)(i), are not required to escrow entrance fees, unless otherwise required by the Commissioner."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

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James C. Gardner
President of the Senate

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Daniel Blue, Jr.
Speaker of the House of Representatives