

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 354
Appropriations/Base Budget Committee Substitute Adopted 4/23/09
House Committee Substitute Favorable 5/26/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S354-PCS55623-SHF-79

Short Title: Continuing Care Retire. Community/Home Care.

(Public)

Sponsors:

Referred to:

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO PERMIT CONTINUING CARE RETIREMENT COMMUNITIES TO PROVIDE OR ARRANGE FOR HOME CARE SERVICES WITHOUT PROVIDING LODGING WHEN THOSE SERVICES ARE PROVIDED ADJUNCT TO A CONTRACT FOR CONTINUING CARE AND TO REQUIRE THE DEPARTMENT OF INSURANCE AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY ISSUES RELATED TO CONTINUING CARE RETIREMENT COMMUNITIES PROVIDING HOME CARE SERVICES WITHOUT PROVIDING LODGING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-64-5 reads as rewritten:

"§ 58-64-5. License.

(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. It is a Class 1 misdemeanor for any person, other than a provider licensed under this Article, to advertise or market to the general public any product similar to continuing care through the use of such terms as "life care", "continuing care", or "guaranteed care for life", or similar terms, words, or phrases. The licensing process may involve a series of steps pursuant to rules adopted by the Commissioner under this Article.

(b) The application for a license shall be filed with the Department by the provider on forms prescribed by the Department and within a period of time prescribed by the Department; and shall include all information required by the Department pursuant to rules adopted by it under this Article including, but not limited to, the disclosure statement meeting the requirements of this Article and other financial and facility development information required by the Department. The application for a license must be accompanied by an application fee of ~~five hundred one thousand~~ dollars (\$500.00\$1,000).

...."

SECTION 2. G.S. 58-64-1 reads as rewritten:

"§ 58-64-1. Definitions.

As used in this Article, unless otherwise specified:

- (1) "~~Continuing care~~" means the Continuing care. – The furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services,



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1 medical services, or other health related services, under ~~an agreement~~
 2 contract approved by the Department in accordance with this Article
 3 effective for the life of the individual or for a period longer than one year.
 4 "Continuing care" may also include home care services provided or arranged
 5 by a provider of lodging at a facility to an individual who has entered into a
 6 continuing care contract with the provider but is not yet receiving lodging.

7 (2) ~~"Entrance fee" means a~~ Entrance fee. – A payment that assures a resident a
 8 place in a facility for a term of years or for life.

9 (3) ~~"Facility" means the~~ Facility. – The retirement community or communities in
 10 which a provider undertakes to provide continuing care to an individual.

11 (4) ~~"Health related services" means, at~~ Health-related services. – At a minimum,
 12 nursing home admission or assistance in the activities of daily living,
 13 exclusive of the provision of meals or cleaning services.

14 (4a) Home care services. – Defined in G.S. 131E-136.

15 (5) ~~"Living unit" means a~~ Living unit. – A room, apartment, cottage, or other
 16 area within a facility set aside for the exclusive use or control of one or more
 17 identified residents.

18 (5a) Lodging. – A living unit as set forth in a contract approved by the
 19 Department in accordance with this Article.

20 (6) ~~"Provider" means the~~ Provider. – The promoter, developer, or owner of a
 21 facility, whether a natural person, partnership, or other unincorporated
 22 association, however organized, trust, or corporation, of an institution,
 23 building, residence, or other place, whether operated for profit or not, or any
 24 other person, that solicits or undertakes to provide continuing care under a
 25 continuing care facility contract, or that represents himself, herself, or itself
 26 as providing continuing care or "life care."

27 (7) ~~"Resident" means a~~ Resident. – A purchaser of, a nominee of, or a subscriber
 28 to, a continuing care contract.

29 (8) ~~"Hazardous financial condition" means a~~ Hazardous financial condition. – A
 30 provider is insolvent or in eminent danger of becoming insolvent."

31 **SECTION 3.** G.S. 58-64-25 reads as rewritten:

32 **"§ 58-64-25. Contract for continuing care; specifications.**

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

34 ...

35 (b) Each contract shall include provisions that specify the following:

36 (1) The total consideration to be ~~paid;~~ paid.

37 (2) Services to be ~~provided;~~ provided.

38 (3) The procedures the provider shall follow to change the resident's
 39 accommodation if necessary for the protection of the health or safety of the
 40 resident or the general and economic welfare of the ~~residents;~~ residents.

41 (4) The policies to be implemented if the resident cannot pay the periodic
 42 ~~fees;~~ fees.

43 (5) The terms governing the refund of any portion of the entrance fee in the
 44 event of discharge by the provider or cancellation by the ~~resident;~~ resident.

45 (6) The policy regarding increasing the periodic ~~fees;~~ fees.

46 (7) The description of the living ~~quarters;~~ quarters.

47 (8) Any religious or charitable affiliations of the provider and the extent, if any,
 48 to which the affiliate organization will be responsible for the financial and
 49 contractual obligations of the ~~provider;~~ provider.

50 (9) Any property rights of the ~~resident;~~ resident.

- 1 (10) The policy, if any, regarding fee adjustments if the resident is voluntarily
2 absent from the ~~facility;~~ facility.
- 3 (11) Any requirement, if any, that the resident apply for Medicaid, public
4 assistance, or any public benefit program.
- 5 (12) The procedures for determining when the individual will transition to
6 receiving lodging and health-related services in the event that a contract
7 allows for the provision or arrangement of continuing care without lodging."

8 **SECTION 4.** Article 64 of Chapter 58 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 58-64-7 Continuing care services without lodging.**

11 (a) A provider of continuing care who has obtained a license pursuant to this Article
12 and desires to provide or arrange for continuing care services, including home care services, to
13 an individual who has entered into a continuing care contract with the provider but is not yet
14 receiving lodging must submit the following to the Commissioner:

- 15 (1) An application to offer continuing care services without providing lodging.
- 16 (2) An amended Disclosure Statement containing a description of the proposed
17 continuing care services that will be provided without lodging, including the
18 target market, the types of services to be provided, and the fees to be
19 charged.
- 20 (3) A copy of the written service agreement which must contain those
21 provisions as prescribed in G.S. 58-64-25(b).
- 22 (4) A summary of an actuarial report that presents the impact of providing
23 continuing care services without lodging on the overall operation of the
24 continuing care retirement community.
- 25 (5) A financial feasibility study prepared by a certified public accountant that
26 shows the financial impact of providing continuing care services without
27 lodging on the applicant and the continuing care retirement facility or
28 facilities. The financial feasibility study shall include a statement of
29 activities reporting the revenue and expense details for providing continuing
30 care services without lodging, as well as any impact the provision of these
31 services will have on operating reserves.
- 32 (6) Evidence of the license required under Part 3 of Article 6 of Chapter 131E of
33 the General Statutes to provide home care services, or a contract with a
34 licensed home care agency for the provision of home care services to the
35 individuals under the continuing care services without lodging program.

36 (b) A provider issued a start-up certificate for the provision of continuing care services
37 without lodging must enter into binding written service agreements with subscribers to provide
38 continuing care services without lodging.

39 (c) When providing the financial statements and five-year forecasts required by
40 G.S. 58-64-20, a provider offering continuing care services without lodging must account for
41 the related revenue and expenses generated from the provision of these services separate from
42 the facility's on-site operation."

43 **SECTION 5.** The Department of Insurance and the Department of Health and
44 Human Services shall identify any statutory, regulatory, or practical barriers that prevent or
45 discourage individuals that contract with continuing care retirement communities from
46 receiving home care services for as long as they need home care services and are able to be
47 safely cared for in their homes. The Departments shall jointly provide an interim status report
48 on or before November 1, 2010, and a final report on or before September 1, 2011, to the North
49 Carolina Study Commission on Aging and the Joint Legislative Health Care Oversight
50 Committee. Each report shall include findings and recommendations made to date on statutory

1 changes and a timetable for promulgation of rules to eliminate any identified barriers to
2 providing appropriate levels of care.

3 **SECTION 6.** Section 1 of this act becomes effective July 1, 2010, and applies to
4 applications filed on or after that date. The remainder of the act is effective when it becomes
5 law, and Sections 2, 3, and 4 expire July 1, 2012. Contracts executed on or after the effective
6 date of this act that allow for the provision or arrangement of continuing care without lodging
7 remain effective after July 1, 2012, and the continuing care retirement community may provide
8 home care services without lodging under the terms of the contract after July 1, 2012.