SENATE BILL 145:
Continuing Care Retirement Communities Act.

2023-2024 General Assembly

Committee:	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	June 26, 2023
Introduced by:	Sen. Johnson	**Prepared by:**	Kristen L. Harris
Analysis of:	Third Edition		Staff Attorney

OVERVIEW: Senate Bill 145 would repeal the current laws regulating community care retirement communities and create the "Continuing Care Retirement Communities Act."

[As introduced, this bill was identical to H170, as introduced by Reps. Setzer, Humphrey, which is currently in House Insurance.]

CURRENT LAW: Continuing care retirement communities (CCRCs) are currently regulated by the Department of Insurance under Article 64 of Chapter 58 of the General Statutes.

BILL ANALYSIS: Senate Bill 145 would repeal the current laws regulating CCRCs and replace them with the following provisions to be known as the "Continuing Care Retirement Communities Act" in a new Article 64A in Chapter 58.

PART I. General Provisions

Part 1 would amend existing definitions and create new definitions under the Act.

Before providing continuing care or leasing land for a continuing care retirement community, a person would have to obtain approval from the Commissioner of Insurance (COI).

All filings required by the COI would be submitted electronically.

The COI could waive or modify any provision of the Act for a state of emergency or disaster or an incident beyond the provider's reasonable control.

Certain documents of the provider would be confidential and not public record.

A provider would be prohibited from advertising in a way that conflicts with its disclosure statement or any continuing care contract.

PART II. Approval, Certification, Licensure, and Permitting Process

Part 2 would require a person to obtain different types of approvals from the COI during the process of establishing a continuing care business and building a continuing care retirement community. Each approval would have its own application and approval requirements.

Before marketing a proposed continuing care retirement community to measure its viability and accepting deposits to reserve a unit, a person would have to obtain a permit from the COI.

A person would pay $2,000 and apply to the COI for a start-up certificate, which if approved, would allow the person the enter into contracts and accept entrance fees and deposits, begin site preparation work, and construct model independent living units for marketing.

After receiving approval for a preliminary certificate from the COI, a person could construct a continuing care retirement community.

Approval by the COI of a permanent license would allow a provider to open a continuing care retirement community and provide continuing care. If the COI determines that a person did not meet the requirements for a permanent license, the COI could deny the application or issue a restricted permanent license. If a restricted license is issued, the COI would explain the restrictions and the conditions that must be satisfied to qualify for a permanent license.

After the issuance of a permit, certificate, or license, a provider would submit periodic sales, development, and financial reports to the COI and post its disclosure statement on the Department's website.

The COI would follow a specific schedule when responding to, reviewing, and approving or disapproving applications.

PART III. Expansion

Part 3 would require a provider to notify and obtain written approval from the COI before marketing and collecting deposits for a proposed expansion of a continuing care retirement community that is 20% or more of existing independent living units. Approval of the expansion notification would allow the provider to advertise the expansion, enter into contracts, and collect deposits for independent living units. Construction on the expansion would also have to be approved by the COI.

PART IV. Escrow Account

Part 4 would establish rules and regulations for a provider's handling of entrance fees and deposits and escrow accounts and escrow agreements. All entrance fees and deposits would be deposited in an escrow account and not commingled with any other funds. The escrow agent, escrow agreement, and any changes to the escrow agreement, would be approved by the COI. Interest, income, and other gains derived from funds held in an escrow account would not be released or distributed from the escrow account without the written approval of the COI. The COI would also have to approve when any escrow fund is encumbered or used as collateral. A provider would have to petition the COI in writing to request a release of escrowed entrance fees and deposits. The escrow agent would release the fees and deposits only after receiving permission from the COI in writing.

PART V. Disclosure Statement

Part 5 would require a provider to prepare a disclosure statement for each continuing care retirement community operated in the State and establish what must be included in the statement. The COI would be required to review the statement for completeness, but not accuracy. The COI could require the provider to amend the statement to provide full disclosure to the residents and if the statement is incomplete, unnecessarily complex, voluminous, confusing, or illegible. The COI would post the statement for each continuing care retirement community on the Department's website.

A provider would be required to deliver a disclosure statement to a prospective resident upon either the execution of a contract or the transfer of money or a deposit, whichever occurs first. The resident would sign an acknowledgement of receipt, and the provider would keep a copy of all the documents for at least five years.

Within 150 days of the end of each fiscal year, a provider would file a revised disclosure statement and pay a filing fee of $2,000. The COI would post the revised statement on the Department's website, and the provider would make the statement available to all residents and depositors. If the provider fails to file a revised disclosure statement by the due date, and no extension has been granted, a $1,000 late fee will be

charged. If the revised statement is filed more than 30 days late, an additional $30 per day over the first 30 days will be charged.

A provider could revise its disclosure statement at any time if, in the opinion of the provider, revision is necessary to prevent an otherwise current disclosure statement from containing a material misstatement of fact or omitting a required material fact. The COI would post the revised statement on the Department's website.

PART VI. Binding Reservation Agreement and Continuing Care Contract

Part 6 would establish requirements for binding reservation agreements between a depositor and a provider and continuing care contracts between a resident and a provider. The documents would contain provisions addressing when the agreement or contract could be rescinded, would be automatically cancelled, and when money would be refunded to a depositor or resident.

In addition, a continuing care contract would have to provide additional information including fees to be charged to residents and the policies on increasing fees or adjusting fees if a resident is absent or cannot pay. A continuing care contract would also include a notice provision encouraging residents to seek financial and legal advice before signing the contract.

PART VII. Continuing Care at Home

Part 7 would require a person, who has either a permanent license or a restricted permanent license, to obtain a license from the COI and pay a $500 application fee before arranging or providing continuing care at home. After receiving a license, the provider would be required to file a disclosure statement and periodic reports with the COI.

A continuing care at home contract between an individual and a provider would contain provisions addressing when the contract could be rescinded, would be automatically cancelled, and when money would be refunded to a depositor or resident.

In addition, a continuing care at home contract would have to provide additional information including all required fees and the policies on adjusting fees and the services to be provided. A continuing care at home contract would also include a notice provision encouraging residents to seek financial and legal advice before signing the contract.

PART VIII. Annual Report

Part 8 would require a provider, who has obtained a permanent or restricted permanent license, to submit an annual report to the COI. The report would include audited financial statements of the provider's most recent fiscal year, 5-year prospective financial statements of the provider, an operating reserve certification, a disclosure statement on any debt agreements, and dates of semiannual meetings.

The report would be filed within 150 days after the provider's fiscal year-end. If the report is not received by the due date and no extension has been granted, a $1,000 late fee will be charged. If the report is filed more than 30 days late, an additional $30 per day over the first 30 days will be charged.

A provider would be required to notify the COI and all residents in writing if certain events occurred including failing to maintain the required operating reserve and violating any debt agreement.

No permit, certificate, or license issued under the Act would be transferable or have value for sale or exchange as property. Any provider or person who owns real property or leases or uses real property in the operations of a continuing care retirement community would first have to obtain approval from the COI before selling, transferring, or purchasing any real property used in the operations of a continuing care retirement community. The provider would request approval at least 45 days prior to the transaction

and give notice to all affected residents and depositors of the proposed transaction within five business days after receiving approval from the COI.

A person would be required to obtain the COI's approval before entering into an agreement to merge with, or acquire control of, a provider holding a certificate or license under the Act. The provider would give notice to all affected residents and depositors of the proposed merger or acquisition within five business days after receiving approval from the COI.

At least once every three years, a provider would submit an actuarial study to the COI for each continuing care retirement community and any continuing care at home program it operates.

A provider would be required to provide notice to the COI and all affected residents and depositors before changing its name or the name of a continuing care retirement community and notify the COI if it reduces the number of any type of living unit by 20% or more.

Before contracting with a third party for the management of a continuing care retirement community, the provider must obtain approval from the COI and inform all residents in writing of the request for approval. The provider must remove a third-party manager immediately under certain circumstances.

PART IX. Operating Reserve

Part 9 would require a provider to maintain an operating reserve depending on its 12-month daily average independent living unit occupancy rate and establish the methods for calculating the operating reserve. The COI would be able to increase the amount a provider is required to maintain or require the provider to place the operating reserve on deposit with the COI if the COI determines that the provider is in a hazardous condition. The provider would have to notify all residents in writing if the COI took such actions and provide a power of attorney to the COI.

A provider would fund its operating reserve with qualifying assets including cash and cash equivalents, investment grade securities, corporate stock that is traded on a public securities exchange that can be readily valued and liquidated for cash, and other assets considered to be acceptable by the COI. Assets maintained by the provider as an operating reserve would not be subject to any liens, charges, judgments, garnishments, or creditors' claims and would not be pledged as collateral or otherwise encumbered. A provider could fund an operating reserve by filing a surety bond or letter of credit with the COI.

To release an operating reserve in whole, or in part, a provider would submit a detailed request in writing to the COI, and at the same time, provide written notice of the request to all residents. The COI could deny the request if it is determined that the release is not in the best interests of the residents.

PART X. Offense and Penalties

Part 10 would allow the COI to deny an application or request for approval or restrict or revoke any permit, certificate, license, or other authorization issued under the Act if an applicant or provider committed certain acts or violations.

If the COI issued a cease-and-desist order, restriction, or revocation, the provider would have to notify all residents and depositors of the action within five business days. While a revocation order is under appeal, the provider could not accept any new deposits or entrance fees, however, a revocation would not release the provider from its obligations under continuing care and continuing care at home contracts.

The COI would consider several factors to determine if a provider is in a hazardous condition including whether the provider is impaired or insolvent, adverse findings in audit reports and actuarial opinions, the age and collectability of receivables, and past or possibly future cash flow or liquidity problems.

After determining that a provider is in a hazardous condition, the COI could issue an order and require a provider to submit a corrective action plan and notify all residents and depositors. The plan would include proposals of how to eliminate the hazardous condition and a date the provider anticipates it will rectify the problems and deficiencies identified by the COI.

The COI would have investigative authority inside and outside of the State.

A provider, who enters into an agreement or contract with a person without first delivering a disclosure statement to the person, or who enters into an agreement or contract with a person who relies on a false disclosure statement, would be liable to that person for actual damages and repayment of all fees regardless of whether the provider had actual knowledge of the misstatement or omission in the disclosure statement. A person would be prohibited from filing or maintaining this claim of action against a provider, if before filing, the provider offered a refund of all amounts paid to the provider plus interest and the person failed to accept it within 30 days of receipt of the offer.

The statute of limitations for a claim created under the Act would be three years after the alleged violation.

A person who willfully and knowingly violates a provision of the Act is guilty of a Class 1 misdemeanor.

After notice and opportunity for hearing, a permit, certificate, license, or other approval issued by the COI would be forfeited under certain circumstances including when the provider terminates marketing a proposed continuing care retirement community, a permit, certificate, or license is surrendered, or a continuing care retirement community closes. All residents and depositors would be notified within five business days after a forfeiture.

For violating the Act, the COI could prohibit a provider from entering into agreements and contracts and order the provider to make recission offers to any resident or depositor. A resident or depositor would have to accept the offer within 30 days of receipt of the offer.

A provider could be subject to monetary penalties for violating the Act in amounts of not less than $100 or more than $1,000 per violation.

PART XI. Delinquency Proceedings

Part 11 would allow the COI to commence a supervision proceeding pursuant to Article 30 (Insurers Supervision, Rehabilitation, Liquidation) in Chapter 58 (Insurance) of the General Statutes or apply to the Superior Court of Wake County or to the federal bankruptcy court that may have previously taken jurisdiction over a provider for an order to rehabilitate or liquidate a provider if certain factors apply including that the provider is in a hazardous condition, is bankrupt or insolvent, or has failed to maintain an escrow account or operating reserve required under the Act. If the COI commences a supervision proceeding, the provider would be required to notify all residents and depositors. If a rehabilitation or liquidation proceeding is commenced, the COI would notify the residents and depositors. If the objectives of a rehabilitation have been accomplished, the Court would terminate the rehabilitation. An order for rehabilitation would be refused and vacated if a provider posts bond in an amount determined by the COI to be equal to the reserve funding that would need to be available to fulfill the provider's obligations.

PART XII. Residents' Right to Organization and Semiannual Meetings

Part 12 would require the governing body of a provider to hold in-person semiannual meetings with residents of each continuing care retirement community and to provide residents at least seven days' advance notice of the meetings. In the event of a state of emergency or disaster, meetings could be held via telephone, video conference, or video broadcast.

PART XIII. Miscellaneous Provisions

Part 13 would create a 12-member Continuing Care Advisory Committee comprised of providers, residents, and professionals in the industry. The COI would appoint six members, and both the President Pro Tempore of the Senate and the Speaker of the House would appoint three members each.

Nothing in the Act would affect the authority of DHHS to license or regulated long-term care facilities.

EFFECTIVE DATE: The act becomes effective October 1, 2023, and would apply to contracts entered into, renewed, or amended on or after that date.