

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  
House Committee Substitute #2 Favorable 6/16/10

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, medical services, or other health related services, ~~under an agreement a~~ contract approved by the Department in accordance with this Article effective for the life of the individual or for a period longer than one year.



1 "Continuing care" may also include home care services provided or arranged  
 2 by a provider of lodging at a facility to an individual who has entered into a  
 3 continuing care contract with the provider but is not yet receiving lodging.

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

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

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

11 (4a) Home care services. – Defined in G.S. 131E-136.

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

15 (5a) Lodging. – A living unit as set forth in a contract approved by the  
 16 Department in accordance with this Article.

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

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

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

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

29 **"§ 58-64-25. Contract for continuing care; specifications.**

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

31 ...

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

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

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

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

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

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

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

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

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

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

48 (10) The policy, if any, regarding fee adjustments if the resident is voluntarily  
 49 absent from the ~~facility;~~ facility.

50 (11) Any requirement, if any, that the resident apply for Medicaid, public  
 51 assistance, or any public benefit program.

1           (12) The procedures for determining when the individual will transition to  
2           receiving lodging and health-related services in the event that a contract  
3           allows for the provision or arrangement of continuing care without lodging."

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

6 **"§ 58-64-7 Continuing care services without lodging.**

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

11           (1) An application to offer continuing care services without providing lodging.

12           (2) An amended Disclosure Statement containing a description of the proposed  
13 continuing care services that will be provided without lodging, including the  
14 target market, the types of services to be provided, and the fees to be  
15 charged.

16           (3) A copy of the written service agreement which must contain those  
17 provisions as prescribed in G.S. 58-64-25(b).

18           (4) A summary of an actuarial report that presents the impact of providing  
19 continuing care services without lodging on the overall operation of the  
20 continuing care retirement community.

21           (5) A financial feasibility study prepared by a certified public accountant that  
22 shows the financial impact of providing continuing care services without  
23 lodging on the applicant and the continuing care retirement facility or  
24 facilities. The financial feasibility study shall include a statement of  
25 activities reporting the revenue and expense details for providing continuing  
26 care services without lodging, as well as any impact the provision of these  
27 services will have on operating reserves.

28           (6) Evidence of the license required under Part 3 of Article 6 of Chapter 131E of  
29 the General Statutes to provide home care services, or a contract with a  
30 licensed home care agency for the provision of home care services to the  
31 individuals under the continuing care services without lodging program.

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

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

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

49           **SECTION 6.** Section 1 of this act becomes effective July 1, 2010, and applies to  
50 applications filed on or after that date. The remainder of the act is effective when it becomes  
51 law, and Sections 2, 3, and 4 expire July 1, 2012. Contracts executed on or after the effective

1 date of this act that allow for the provision or arrangement of continuing care without lodging  
2 remain effective after July 1, 2012, and the continuing care retirement community may provide  
3 home care services without lodging under the terms of the contract after July 1, 2012.