

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2010-128
SENATE BILL 354

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(b) reads as rewritten:

"(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. "Continuing care" may also include home care services provided or arranged by a provider of lodging at a facility to an individual who has entered into a continuing care contract with the provider but is not yet receiving lodging.
- (2) ~~"Entrance fee" means a~~ Entrance fee. – A payment that assures a resident a place in a facility for a term of years or for life.
- (3) ~~"Facility" means the~~Facility. – The retirement community or communities in which a provider undertakes to provide continuing care to an individual.
- (4) ~~"Health related services" means, at~~Health-related services. – At a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.
- (4a) Home care services. – Defined in G.S. 131E-136.
- (5) ~~"Living unit" means a~~Living unit. – A room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.
- (5a) Lodging. – A living unit as set forth in a contract approved by the Department in accordance with this Article.
- (6) ~~"Provider" means the~~Provider. – The promoter, developer, or owner of a facility, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a



- continuing care facility contract, or that represents himself, herself, or itself as providing continuing care or "life care."
- (7) ~~"Resident" means a Resident.~~ – A purchaser of, a nominee of, or a subscriber to, a continuing care contract.
- (8) ~~"Hazardous financial condition" means a Hazardous financial condition.~~ – A provider is insolvent or in eminent danger of becoming insolvent."

SECTION 3. G.S. 58-64-25(b) reads as rewritten:

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

- (1) The total consideration to be ~~paid;~~ paid.
- (2) Services to be ~~provided;~~ provided.
- (3) The procedures the provider shall follow to change the resident's accommodation if necessary for the protection of the health or safety of the resident or the general and economic welfare of the ~~residents;~~ residents.
- (4) The policies to be implemented if the resident cannot pay the periodic ~~fees;~~ fees.
- (5) The terms governing the refund of any portion of the entrance fee in the event of discharge by the provider or cancellation by the ~~resident;~~ resident.
- (6) The policy regarding increasing the periodic ~~fees;~~ fees.
- (7) The description of the living ~~quarters;~~ quarters.
- (8) Any religious or charitable affiliations of the provider and the extent, if any, to which the affiliate organization will be responsible for the financial and contractual obligations of the ~~provider;~~ provider.
- (9) Any property rights of the ~~resident;~~ resident.
- (10) The policy, if any, regarding fee adjustments if the resident is voluntarily absent from the ~~facility;~~ facility.
- (11) Any requirement, if any, that the resident apply for Medicaid, public assistance, or any public benefit program.
- (12) The procedures for determining when the individual will transition to receiving lodging and health-related services in the event that a contract allows for the provision or arrangement of continuing care without lodging."

SECTION 4. Article 64 of Chapter 58 of the General Statutes is amended by

adding a new section to read:

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

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

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

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

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

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

SECTION 6. Section 1 of this act is effective when it becomes law, and applies to applications filed on or after that date, and the remainder of the act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 5:05 p.m. this 21st day of July, 2010