

**CONTINUING CARE RETIREMENT COMMUNITIES
FEE-FOR-SERVICE CONTINUING CARE RETIREMENT COMMUNITIES**

**POLICY STATEMENT
REQUESTS FOR COMMUNITY RECONFIGURATION**

September 19, 2007

TO:

Continuing Care Retirement Community/Fee-for-Service Continuing Care Retirement Community Executive Staff, Managers and Developers

SUBJECT:

Requests for Community Reconfiguration after issuance of the Certificate of Authority.

PURPOSE:

The purpose of this letter is to inform continuing care retirement community (CCRC) and fee-for-service continuing care retirement community (FFSCCRC) operators and developers that they may request a change in the number of proposed or existing independent living units (ILUs), adult care facility units (ACF) and skilled nursing facility beds (SNF) after issuance of the Certificate of Authority. This letter details the procedures that must be followed when making these requests.

BACKGROUND:

CCRCs and FFSCCRCs, whether in-development or fully operational, must be able to respond to marketing trends and to the demands of their target populations. Requests from prospective residents for flexible living arrangements and the desire to assure continued marketability have encouraged some communities to consider renovation of previously constructed buildings or redrafting of proposed building plans. During the period 2003 through 2005, three CCRCs submitted requests to the Department for changes to the number of independent living units originally approved as part of the CCRC's Certificate of Authority. The requests were reviewed by the Department and the Department of Insurance for any programmatic or financial impact on the community. The requests did not require extensive State Agency review but the time required to finalize the requests led the Department to reexamine the accepted review and approval process.

Section 4604(1) of the Public Health Law, defining certificate of authority requirements, states that "no person shall construct, expand, acquire, maintain or operate a continuing care retirement community, or enter into a contract as an operator, or solicit the execution of any contract for continuing care retirement community services to be provided within the state or advertise itself or otherwise hold itself as a "continuing care retirement

community”, without obtaining a certificate of authority pursuant to this article.” Similar language at §4655(1) applies to fee-for-service communities. Department interpretation of specific language in these sections (“construct, expand, acquire, maintain or operate”) as applicable to any reconfiguration established CCRC Council approval and the issuance of an amended Certificate of Authority as requirements for community modifications, and contributed to delays in processing these requests.

Applying section 4604(1) (or §4655(1)) to reconfiguration requests required the sponsor or operator to obtain CCRC Council approval as a prerequisite to receiving an amended Certificate of Authority. This additional Council approval was issued after completion of a comprehensive Department of Health/Department of Insurance review and approval process which assured that the reconfiguration had no significant impact on resident services and did not negatively impact the CCRC’s financial position. After reviewing the type of requests received and the review procedure, the CCRC Council affirmed that the State Agency review and approval process was sufficient for reconfiguration requests proposed by communities with a Certificate of Authority. Additional approval by the CCRC Council was deemed unnecessary.

DEPARTMENT ACTION

Section 4604(1) (or §4655(1)) was applied to community modifications as current statute and regulation did not specifically address reconfiguration requests. Department regulations pertaining to continuing care retirement communities were reviewed to determine if regulatory authority for a review and approval process could be established.

Part 901 of Title 10 NYCRR regulates specific operational and administrative requirements for continuing care retirement communities including disclosures, terms of the resident contract, reporting, notification and submission requirements, necessary approvals for rates, and changes in establishment and operation of the community.

Section 901.9 deals specifically with proposed changes in the development and operation of a CCRC and delineates notification, submission and approval requirements for these changes. The level of approval required such as the Commissioner, the Superintendent of Insurance, or approval of the Continuing Care Retirement Community Council, is determined by the substance of the requested change. While regulation defined a review and approval process for changes in contracts and disclosure statements, community services, the construction timetable, and, entrance and monthly fees, the regulations did not address approval requirements for community modifications.

To specifically address approvals for reconfiguration requests, section 901.9 was amended by adding a new subdivision (f) delineating the reviews and levels of approval required when a community proposes a reconfiguration of the number of independent living units, adult care facility units or skilled nursing facility beds previously approved under the community’s Certificate of Authority, or proposes to add adult care facility units or skilled nursing facility beds not previously approved under the community’s Certificate of Authority.

The new subdivision (f) reads:

§901.9(f) Any physical restructuring of the community which results in an addition or loss in the number of independent living units, adult care facility units or residential health care facility beds previously approved under the community's Certificate of Authority shall require only the prior approval of the Commissioner, with the advice and consent of the Superintendent, and, if required, the advice and consent of the Attorney General; provided, however, that any change in the number of previously approved adult care facility units or residential health care facility beds must receive all required Department approvals prior to approval of the Commissioner. Establishment of a residential health care facility component and/or an adult care facility component, not previously approved under the community's Certificate of Authority, shall require the prior approval of the Continuing Care Retirement Community Council.

This amendment to 10 NYCRR 901.9 was adopted by the Continuing Care Retirement Community Council on August 9, 2007.

REVISED POLICY

Requests for changes in the number of independent living units, adult care facility units and skilled nursing facility beds originally approved as part of a CCRC's Certificate of Authority are reviewed by the Department of Health, the Department of Insurance, and, if an equity model community, by the Office of the Attorney General. Reconfiguration requests will require the approval of the Commissioner, with the advice and consent of the Superintendent, and, if required, the advice and consent of the Attorney General. CCRC Council approval is not required.

PROCESSING OF REQUESTS

Reconfiguration requests must be submitted to the Department for review by regulating State Agencies (the Department, the Department of Insurance and, if an equity model community, the Office of the Attorney General). Reconfiguration includes any change in the number of independent living units, adult care facility units or skilled nursing facility beds.

A Department programmatic review and State Insurance Department financial review are completed for any type of community modification. The financial review determines impact, if any, on the community's financial feasibility.

A request for a change in the number of ILUs will be reviewed by the Department's Bureau of Continuing Care Initiatives and the State Insurance Department.

A request for a change in the number of ACF units will be reviewed by the Department's Bureau of Continuing Care Initiatives, the State Insurance Department, and the Department's Division of Home and Community Based Services. The revised number of

ACF units must meet the reasonable relation requirement under Article 46 of the Public Health Law (§4604(6)(e)) or Article 46-A of the Public Health Law (§4655(5)(e)) which state that the total number of beds for the nursing facility component and the adult care facility must bear a reasonable relation to the number of independent living units.

A request for a change in the number of SNF beds will be reviewed by the Department's Bureau of Continuing Care Initiatives and the State Insurance Department. The revised number of SNF beds must meet the reasonable relation requirement under Article 46 of the Public Health Law (§4604(6)(e)) or Article 46-A of the Public Health Law (§4655(5)(e)). In addition, the applicant must submit all required Certificate of Need schedules and meet all requirements for an Article 28 new construction project. If the skilled nursing facility does not have an operating certificate, Public Health Council approval is also required.

Final approvals will be issued by the Commissioner with the advice and consent of the Superintendent.

****NOTE:** Review by the State Insurance Department is not required when processing requests submitted by an Article 46-A fee-for-service continuing care retirement community. The financial feasibility of the proposed reconfiguration will be approved by the Department of Health.

****NOTE:** Reconfiguration requests for projects that have not yet received a Certificate of Authority must also be submitted to the Department in the manner noted below.

SUBMISSIONS

Requests to the Department may be sent via electronic mail, facsimile transmission or regular land mail. Electronic mailings should be directed to Loretta Grose at Lrg02@health.state.ny.us. Facsimile transmittals should be directed to Loretta Grose at the Bureau of Continuing Care Initiatives at 518-474-6961. Land mail should be directed to:

Loretta Grose
New York State Department of Health
Bureau of Continuing Care Initiatives
Corning Tower Room 2084
Empire State Plaza
Albany, New York 12237.

The request should specify the extent of the proposed reconfiguration. Upon receipt of the request, the Department will provide the applicant with a list detailing information which must be submitted to initiate the review process.

Any questions regarding this policy statement should be directed to Loretta Grose at 518-474-6965 or via e-mail at Lrg02@health.state.ny.us.