HB 1285

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1285 (Chair, Health and Government Operations Committee)(By Request - Departmental - Aging)

Health and Government Operations

Maryland Department of Aging - Continuing Care in a Retirement Community

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This departmental bill modifies, in accordance with the *non*unanimous recommendations of the Continuing Care Advisory Committee (CCAC), provisions of law related to continuing care retirement communities (CCRCs).

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources.

Local Effect: None.

Small Business Effect: The Maryland Department of Aging (MDoA) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law: This bill modifies current law regarding MDoA's regulation of CCRCs, which offer a range of residential and health care services to serve aging residents and their changing needs.

Continuing Care Agreements

Under current law, a continuing care agreement between a provider and a subscriber must include certain specified information related to consideration paid, services to be provided, payment terms, and procedures for cancellation and transfer. The bill requires a continuing care agreement to contain additional information, including:

- specified information regarding how fees charged to a subscriber may be used;
- a statement that any charges made to the provider's written rules must be distributed to a subscriber at least five days before implementation;
- a separate page that (1) identifies the portions of the agreement that contain provisions concerning any refund of the entrance fee; and (2) includes a signed statement that the subscriber has reviewed the identified portions of the agreement.

The bill also authorizes MDoA to at any time examine, for good cause, continuing care agreements being offered to prospective subscribers.

In addition, the bill specifies that an extensive or modified agreement may not make a "substantial" (rather than *any*) increase in a subscriber's fees, except for adjustments related to inflation or other factors unrelated to the individual subscriber.

Disclosure Statements

Under current law, a continuing care disclosure statement must include certain specified information related to the facility, the organizational structure of the provider, and financial arrangements. The bill requires a continuing care disclosure statement to contain additional information, including:

- charts showing (1) the relationship between the provider and any parent or subsidiary; and (2) the internal organization of the provider;
- a description of the procedures and processes used by the provider to satisfy certain requirements related to subscriber input;
- a statement of all net transfers between the provider and its affiliates during each of the previous 10 years;
- specified information regarding any contractual entrance fee refunds that the provider did not pay when due in full;
- specified information regarding how fees charged to a subscriber may be used; and
- a description of the role of any chapter of the Maryland Continuing Care Residents Association (MaCCRA) at the CCRC.

Removal of Records and Assets

Current provisions of law prohibit a provider from removing its records or assets from the State unless MDoA consents in writing, based on the provider's submission of satisfactory evidence, that the removal (1) will facilitate (and make more economical) the provider's operations; and (2) will not diminish the service or protection to the provider's in-state subscribers. Under the bill, a provider may alternatively submit satisfactory evidence establishing that is has complied with provisions that, in general:

- prohibit a provider from becoming part of an obligated group (or consenting to certain changes to an obligated group) unless the provider obtains MDoA's consent by submitting satisfactory evidence related to debt service coverage, cash on hand, compliance with material contracts, and (with regard to consenting to changes to a group) impact on bond ratings;
- prohibit a provider from directly or indirectly assuming, guaranteeing, or being liable for an obligation of a new CCRC unless the new CCRC has achieved at least one full year of occupancy of at least 85%; and
- require a provider that is part of an obligated group to submit specified financial information to MDoA.

The bill specifies that removal includes the act of agreeing to directly or indirectly assume, guarantee, or be liable for indebtedness or other obligations of an out-of-state operation. In addition, the bill (1) authorizes MDoA to obtain the financial statements of a provider's affiliates under certain circumstances; and (2) requires a provider to, on request, provide copies of its financial statements to a subscriber or prospective subscriber that has paid a deposit or entrance fee.

Subscriber Input and Grievance Procedures

Under current law, a provider must either have a governing body or select a committee to meet with either the resident association or a reasonable number of representatives of each of the provider's facilities. The bill increases the number of subscribers on a provider's governing body and requires that a subscriber-member of the governing body be subject to ratification by other subscribers. In addition, the bill requires a provider to make available to subscribers nonconfidential portions of minutes, as well as the latest certified financial statements of any nonindividual entities that control the provider.

Current provisions of law require a provider to establish an internal subscriber grievance procedure to allow a subscriber or group of subscribers to collectively submit a written grievance to the provider. The bill requires this procedure to also allow a subscriber or group of subscribers to obtain, at any stage of the grievance process, assistance and counsel from any person other than an attorney that is not a relative of a subscriber submitting the grievance. Current provisions of law specify that, if mediation is sought, it must be nonbinding and the parties may not be represented by counsel. Under the bill, however, the parties may be represented by counsel if all parties agree.

Required Actuarial Studies

Under current law, a provider must annually file an application for a renewal certificate of registration that contains an actuarial study reviewed by a qualified actuary and submitted every three years, unless an exemption applies. The bill modifies this requirement by specifying that the required actuarial study must be submitted every three years for a provider with extensive or modified agreements and every five years for a provider with fee-for-service agreements. Existing exemptions apply.

Background: According to MDoA, which regulates 35 CCRCs across the State, this bill arises out of concerns among various stakeholders related to the administration of continuing care law – particularly with regard to the unique nature of the contract between providers and subscribers and the increasing complexity of CCRCs' corporate structures. In response to these concerns, the Secretary of Aging reconvened the Continuing Care Advisory Committee, with members that included subscribers, providers, senior advocates, industry professionals, and representatives from MaCCRA and LifeSpan (the largest senior care provider in Maryland). After a year of study by CCAC and its subcommittees, CCAC submitted to the Secretary a final report with recommendations on key issues, including (1) financial matters; (2) refinements to existing statutory language and/or policies; and (3) subscribers' rights. This bill reflects only those recommendations made by CCAC that were *not* also agreed upon by both MaCCRA and LifeSpan.

Additional Comments: Recommendations made by CCAC and agreed upon by both MaCCRA and LifeSpan are reflected in HB 1286, another departmental bill, and SB 963.

Additional Information

Prior Introductions: None.

Cross File: Although not designated as a cross file SB 962 (Senator Kelley – Finance), is identical.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Department of Health and Mental Hygiene, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Department of Aging, Department of Legislative Services

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ncs/mwc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Continuing Care in a Retirement Community

BILL NUMBER: HB 1285

PREPARED BY: Maryland Department of Aging

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

____ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.