

# SENATE BILL 276

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CF HB 271

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By: **Senators Kelley, Astle, Feldman, Forehand, Kittleman, Klausmeier,  
Mathias, Montgomery, and Pugh**

Introduced and read first time: January 17, 2014

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Continuing Care Retirement Communities – Continuing Care Agreements –**  
3 **Actuarial Studies**

4 FOR the purpose of altering the contents of a renewal application for a continuing care  
5 retirement community by requiring that actuarial studies reviewed by qualified  
6 actuaries be submitted on a certain basis for certain continuing care  
7 agreements; defining certain terms; and generally relating to continuing care  
8 retirement community continuing care agreements and actuarial studies.

9 BY repealing and reenacting, with amendments,  
10 Article – Human Services  
11 Section 10–401 and 10–413(a)  
12 Annotated Code of Maryland  
13 (2007 Volume and 2013 Supplement)

14 Preamble

15 WHEREAS, The majority of elderly Marylanders who enter contracts with  
16 continuing care retirement communities (CCRCs) have fee-for-service type (Type C)  
17 contracts; and

18 WHEREAS, Type C contracts require increased monthly fees for residents who  
19 move from independent living to the communities' long-term care facilities; and

20 WHEREAS, CCRCs offering Type C contracts have substantial long-term  
21 liabilities because of large refunds owed when a resident dies or moves out of the  
22 community; and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The only Maryland CCRC contracts that are not based on actuarial  
2 studies, including such factors as rates of mortality, morbidity, inflation, and return  
3 on investments, are Type C contracts; and

4 WHEREAS, Actuarial studies are required every 3 years on Maryland Type A  
5 and Type B CCRC contracts; now, therefore,

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Human Services**

9 10–401.

10 (a) In this subtitle the following words have the meanings indicated.

11 (b) “Assisted living program” has the meaning stated in § 19–1801 of the  
12 Health – General Article.

13 (c) “Certified financial statement” means a complete audit prepared and  
14 certified by an independent certified public accountant.

15 (d) “Continuing care” means:

16 (1) continuing care in a retirement community; or

17 (2) continuing care at home.

18 (e) “Continuing care agreement” means an agreement between a provider  
19 and a subscriber to provide continuing care.

20 (f) (1) “Continuing care at home” means providing medical, nursing, or  
21 other health related services directly or by contractual arrangement:

22 (i) to an individual who is at least 60 years of age and not  
23 related by blood or marriage to the provider;

24 (ii) for the life of the individual or for a period exceeding 1 year;  
25 and

26 (iii) under a written agreement that requires a transfer of assets  
27 or an entrance fee notwithstanding periodic charges.

28 (2) “Continuing care at home” includes providing assistance with the  
29 physical maintenance of the individual’s dwelling.

1 (g) “Continuing care in a retirement community” means providing shelter  
2 and providing either medical and nursing or other health related services or making  
3 the services readily accessible through the provider or an affiliate of the provider,  
4 whether or not the services are specifically offered in the written agreement for  
5 shelter:

6 (1) to an individual who is at least 60 years of age and not related by  
7 blood or marriage to the provider;

8 (2) for the life of the individual or for a period exceeding 1 year; and

9 (3) under one or more written agreements that require a transfer of  
10 assets or an entrance fee notwithstanding periodic charges.

11 (h) (1) “Contractual entrance fee refund” means a repayment of all or part  
12 of a subscriber’s entrance fee to the subscriber or the subscriber’s estate or designated  
13 beneficiary, as required by the terms of the continuing care agreement.

14 (2) “Contractual entrance fee refund” does not include a payment  
15 required under § 10–446 or § 10–448 of this subtitle.

16 (i) “Conversion” means converting a physical plant that provides housing or  
17 shelter into a facility if:

18 (1) the residential accommodations exist before a statement of intent  
19 is filed under § 10–409(b) of this subtitle; and

20 (2) at least 60% of the available residential accommodations of the  
21 facility owner were occupied during the two fiscal years prior to the filing of a  
22 statement of intent.

23 (j) “Deposit” means a portion of an entrance fee.

24 (k) (1) “Entrance fee” means a sum of money or other consideration paid  
25 initially or in deferred payments, that:

26 (i) assures a subscriber continuing care for the life of the  
27 subscriber or for a period exceeding 1 year; and

28 (ii) is at least three times the weighted average of the monthly  
29 cost of the periodic fees charged for independent living and assisted living units.

30 (2) “Entrance fee” includes a fee of similar form and application,  
31 regardless of title.

32 (3) “Entrance fee” does not include a surcharge.

1 (l) (1) “Expansion” means any single new capital addition to an existing  
2 facility that meets either of the following criteria:

3 (i) if independent or assisted living units are to be constructed,  
4 the number of units to be constructed is less than or equal to 25% of the number of  
5 existing independent and assisted living units; or

6 (ii) if independent or assisted living units are not to be  
7 constructed, the total projected cost exceeds the sum of:

8 1. 10% of the total operating expenses, less depreciation,  
9 amortization, and interest expense of the facility as shown on the certified financial  
10 statement for the most recent fiscal year for which a certified financial statement is  
11 available; and

12 2. the amount of the existing reserves properly allocable  
13 to, and allocated for, the expansion.

14 (2) “Expansion” does not include renovation and normal repair and  
15 maintenance.

16 (M) “EXTENSIVE AGREEMENT” MEANS A CONTINUING CARE  
17 AGREEMENT UNDER WHICH THE PROVIDER PROMISES TO PROVIDE  
18 RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND LONG-TERM CARE SERVICES  
19 IN A LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE  
20 PROGRAM:

21 (1) FOR AS LONG AS THE SUBSCRIBER NEEDS THE SERVICES; AND

22 (2) WITHOUT ANY SUBSTANTIAL INCREASE IN THE SUBSCRIBER’S  
23 ENTRANCE FEE OR PERIODIC FEES, EXCEPT FOR AN ADJUSTMENT TO ACCOUNT  
24 FOR INCREASED OPERATING COSTS CAUSED BY INFLATION OR OTHER FACTORS  
25 UNRELATED TO THE INDIVIDUAL SUBSCRIBER.

26 [(m)] (N) “Facility” means a physical plant in which continuing care in a  
27 retirement community is provided in accordance with this subtitle.

28 (O) “FEE-FOR-SERVICE AGREEMENT” MEANS A CONTINUING CARE  
29 AGREEMENT THAT IS EITHER:

30 (1) AN AGREEMENT:

31 (I) UNDER WHICH THE PROVIDER PROMISES TO PROVIDE  
32 RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND LONG-TERM CARE SERVICES

1 IN A LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE  
2 PROGRAM FOR AS LONG AS THE SUBSCRIBER NEEDS THE SERVICES; AND

3 (II) THAT PROVIDES THAT LONG-TERM CARE SERVICES IN A  
4 LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM  
5 WILL BE PROVIDED AT A PER DIEM, A FEE-FOR-SERVICE, OR ANOTHER  
6 AGREED-ON RATE THAT GENERALLY REFLECTS THE MARKET RATES FOR  
7 ASSISTED LIVING AND COMPREHENSIVE CARE SERVICES; OR

8 (2) A CONTINUING CARE AGREEMENT THAT IS NOT AN EXTENSIVE  
9 AGREEMENT OR A MODIFIED AGREEMENT.

10 [(n)] (P) "Financial difficulty" means current or impending financial  
11 conditions that impair or may impair the ability of a provider to meet existing or  
12 future obligations.

13 [(o)] (Q) "Governing body" means a board of directors, board of trustees, or  
14 similar group that ultimately directs the affairs of a provider, but whose members are  
15 not required to have an equity interest in the provider.

16 [(p)] (R) (1) "Health related services" means services that are needed by  
17 a subscriber to maintain the subscriber's health.

18 (2) "Health related services" includes:

19 (i) priority admission to a nursing home or assisted living  
20 program; or

21 (ii) except for the provision of meals, assistance with the  
22 activities of daily living.

23 (S) "MODIFIED AGREEMENT" MEANS A CONTINUING CARE AGREEMENT:

24 (1) UNDER WHICH THE PROVIDER PROMISES TO PROVIDE  
25 RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND A LIMITED AMOUNT OF  
26 LONG-TERM CARE SERVICES IN A LICENSED ASSISTED LIVING PROGRAM OR  
27 COMPREHENSIVE CARE PROGRAM:

28 (I) FOR AS LONG AS THE SUBSCRIBER NEEDS SERVICES;  
29 AND

30 (II) WITHOUT ANY SUBSTANTIAL INCREASE IN THE  
31 SUBSCRIBER'S ENTRANCE FEE OR PERIODIC FEES, EXCEPT FOR AN  
32 ADJUSTMENT TO ACCOUNT FOR INCREASED OPERATING COSTS CAUSED BY

1 INFLATION OR OTHER FACTORS UNRELATED TO THE INDIVIDUAL SUBSCRIBER;  
2 AND

3           **(2)** THAT PROVIDES THAT LONG-TERM CARE SERVICES IN A  
4 LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM  
5 BEYOND THE LIMITED AMOUNT OF SERVICES TO BE PROVIDED UNDER ITEM **(1)**  
6 OF THIS SUBSECTION WILL BE PROVIDED AT A PER DIEM, A FEE-FOR-SERVICE,  
7 OR ANOTHER AGREED-ON RATE.

8           **[(q)] (T)** “Person” includes a governmental entity or unit.

9           **[(r)] (U)** “Processing fee” means a fee imposed by a provider for determining  
10 the financial, mental, and physical eligibility of an applicant for entrance into a  
11 facility.

12           **[(s)] (V)** “Provider” means a person who:

13                   (1) undertakes to provide continuing care; and

14                   (2) is:

15                           (i) the owner or operator of a facility; or

16                           (ii) an applicant for or the holder of a preliminary, initial, or  
17 renewal certificate of registration.

18           **[(t)] (W)** “Records” means information maintained by a provider for the  
19 proper operation of a facility under this subtitle.

20           **[(u)] (X)** (1) “Renovation” means any single capital improvement to, or  
21 replacement of, all or part of an existing facility that will not increase the number of  
22 independent or assisted living units and for which the total projected cost exceeds the  
23 sum of:

24                           (i) 20% of the total operating expenses, less depreciation,  
25 amortization, and interest expense of the facility as shown on the certified financial  
26 statement for the most recent fiscal year for which a certified financial statement is  
27 available; and

28                           (ii) the amount of existing reserves properly allocable to, and  
29 allocated for, the renovation.

30                   (2) “Renovation” does not include normal repair or maintenance.

31           **[(v)] (Y)** “Subscriber” means an individual for whom a continuing care  
32 agreement is purchased.

- 1            [(w)] (Z)    (1)    “Surcharge” means a separate and additional charge that:
- 2                            (i)    is imposed simultaneously with the entrance fee; and
- 3                            (ii)   may be required of some, but not all, subscribers because of
- 4 a condition or circumstance that applies only to those subscribers.
- 5            (2)    “Surcharge” does not include a second person entrance fee.

6 10–413.

- 7            (a)    (1)    Each year, within 120 days after the end of a provider’s fiscal year,
- 8 the provider shall file an application for a renewal certificate of registration in a form
- 9 satisfactory to the Department.
- 10            (2)    A renewal application shall contain:
- 11                            (i)    any additions or changes to the information required by §§
- 12 10–408 through 10–410 of this subtitle;
- 13                            (ii)   an audited financial statement for the preceding fiscal year
- 14 prepared in accordance with an audit guide that the Department adopts;
- 15                            (iii) an operating budget for the current fiscal year and a
- 16 projected operating budget for the next fiscal year;
- 17                            (iv)   a cash flow projection for the current fiscal year and the next
- 18 two fiscal years;
- 19                            (v)   a projection of the life expectancy and the number of
- 20 residents who will require nursing home care;
- 21                            (vi)   [an actuarial study reviewed by a qualified actuary and
- 22 submitted every 3 years,] unless the provider is exempted from the requirement for an
- 23 actuarial study by regulations adopted by the Department exempting categories of
- 24 providers that the Department determines have substantially limited [long-term
- 25 care] liability exposure, **AN ACTUARIAL STUDY REVIEWED BY A QUALIFIED**
- 26 **ACTUARY AND SUBMITTED AT LEAST:**

27                            1.    EVERY 3 YEARS FOR A PROVIDER WITH

28 **EXTENSIVE OR MODIFIED AGREEMENTS; AND**

29                            2.    EVERY 5 YEARS FOR A PROVIDER WITH

30 **FEE-FOR-SERVICE AGREEMENTS ONLY;**

1                           (vii) the form and substance of any proposed advertisement,  
2 advertising campaign, or other promotional material not previously submitted to the  
3 Department; and

4                           (viii) any further information that the Department requires.

5                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2014.