Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 375 (Delegates J. Lewis and Platt)
Health and Government Operations

Continuing Care Retirement Communities - Continuing Care Agreements - Actuarial Studies

---

This bill distinguishes among three types of continuing care agreements and modifies the contents of a renewal application submitted by a continuing care retirement community (CCRC) in regard to the submission of an actuarial study reviewed by a qualified actuary.

Fiscal Summary

State Effect: The Maryland Department of Aging (MDOA) can handle any increase in its oversight responsibilities for providers with fee-for-service agreements with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None, as none of the CCRCs in Maryland is a small business.

Analysis

Bill Summary: Unless otherwise exempted, a provider with extensive or modified agreements must *continue* to submit an actuarial study that is reviewed by a qualified actuary every three years, whereas a provider with only fee-for-service agreements must *now* provide an actuarial study that is reviewed by a qualified actuary every five years.

An "extensive agreement" means a continuing care agreement:

- under which the provider promises to provide residential facilities, meals, amenities, and long-term care services in a licensed assisted living program or comprehensive care program where services must be provided for as long as the subscriber needs the services; *and*

- without any substantial increase in the subscriber's entrance fee or periodic fees, except for an adjustment to account for increased operating costs caused by inflation or other factors that are unrelated to the individual subscriber.

A "modified agreement" means a continuing care agreement:

- under which the provider promises to provide residential facilities, meals, amenities, and a *limited* amount of long-term care services in a licensed assisted living program or comprehensive care program for as long as the subscriber needs services – without any substantial increase in the subscriber's entrance fees or periodic fees, except for an adjustment to account for increased operating costs caused by inflation or other factors unrelated to the individual subscriber; *and*

- that establishes that long-term care services in a licensed assisted living program or comprehensive care program beyond the limited amount of services (as described above) be provided at a per diem, fee-for-service, or another agreed-on rate.

A "fee-for-service agreement" means a continuing care agreement that is either:

- an agreement under which the provider promises to provide residential facilities, meals, amenities, and long-term care services in a licensed assisted living program or comprehensive care program for as long as the subscriber needs the services, with these services provided at a per diem, fee-for-service, or another agreed-on rate that generally reflects the market rates for these services; *or*

- a continuing care agreement that is not an extensive agreement or a modified agreement.

Current Law: Every year, within 120 days after the end of a provider's fiscal year, a provider must file an application for a renewal certificate of registration with MDOA. The renewal application must contain (1) required notice of certain changes; (2) an audited financial statement for the preceding fiscal year; (3) an operating budget for the current fiscal year; (4) a projected operating budget for the next fiscal year; (5) a cash flow projection for the current fiscal year and the next two fiscal years; and (6) a projection of the life expectancy and the number of residents who will require nursing home care. Every three years, the renewal application has to include an actuarial study reviewed by a qualified actuary, unless the provider is exempted from this requirement by regulations.

Under the Maryland regulations, a continuing care provider offering Type A (extensive or life care) or B (modified) contracts must submit an actuarial study to MDOA with its initial application and with each renewal application every three years. However, a provider offering Type C (fee-for-service) contracts is exempt from these requirements.

Each actuarial study must include (1) an actuarial balance sheet for current subscribers; (2) a cohort pricing analysis for a cohort of new subscribers; (3) projected cash and investment balances for a period of 20 years; and (4) supporting, detailed documentation, including a projection of future population flows and health care bed needs for 20 years using specified assumptions. MDOA may request this information more frequently to assist in the determination of possible financial difficulty under specified circumstances.

Background: In 2009, in response to concerns expressed by various stakeholders regarding the administration of continuing care law (particularly related to the unique nature of the contract between providers and subscribers and the increasing complexity of CCRC corporate structures), the Secretary of Aging reconvened the Continuing Care Advisory Committee (CCAC). CCAC's membership encompassed subscribers, providers, senior advocates, industry professionals, and representatives from the Maryland Continuing Care Residents Association (MaCCRA) and LifeSpan. In November 2010, CCAC submitted a final report with recommendations, including (1) financial matters; (2) refinements to existing statutory language and policies; and (3) subscribers' rights.

This bill represents a recommendation, adopted by CCAC, that Type C communities (fee-for-service) should be required to have actuarial studies performed at least every five years.

Initial departmental legislation reflecting CCAC's recommendations did not pass. However, recommendations subsequently developed by a small workgroup consisting of representatives from MaCCRA, MDOA, LifeSpan, and the General Assembly were enacted as Chapters 523 and 524 of 2012. Chapters 523 and 524 modified several provisions of law relating to CCRCs, including establishing additional requirements with regard to continuing care agreements, disclosure statements, and grievance procedures; requiring providers to make specified information available to subscribers; modifying requirements for the sale or transfer of a facility; restricting the pledging or encumbering of operating reserve assets; and increasing the operating reserve that a provider must set aside for each facility.

MDOA advises that 24 of the 38 CCRCs currently in Maryland operate with only fee-for-service agreements and would become subject to the requirement to submit an actuarial study every five years with their renewal applications. Another three such CCRCs are planned but have not yet been approved. MDOA further advises that such studies cost approximately $20,000 to $30,000.

Additional Information

Prior Introductions: HB 588 of 2016 received a hearing in the House Health and Government Operations Committee, but no further action was taken. SB 91 of 2015 received an unfavorable report from the Senate Finance Committee. Its cross file, HB 282, received a hearing in the House Health and Government Operations Committee and was subsequently withdrawn. SB 276 of 2014 received a hearing in the Senate Finance Committee, but no further action was taken. Its cross file, HB 271, received an unfavorable report from the House Health and Government Operations Committee.

Cross File: None.

Information Source(s): Maryland Department of Aging; Department of Legislative Services

Fiscal Note History: First Reader - February 1, 2018
mm/jc

Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510