

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1286 (Chair, Health and Government Operations
Committee)(By Request - Departmental - Aging)

Health and Government Operations

Maryland Department of Aging - Continuing Care in a Retirement Community

This departmental bill modifies, in accordance with the 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. In addition, the

agreement must state that the subscriber has received, at least two weeks prior to signing the agreement, a current version of the provider's written rules. Under the bill, a provider must also represent that a subscriber has received (at least two weeks prior to signing) additional information, including (1) a table of contents; (2) if applicable, specified information regarding the use of entrance fees; (3) the continuing care agreement with attachments, exhibits, and addenda; (4) the most recent consumer guide issued by MDoA; (5) the current continuing care disclosure statement; and (6) if applicable, the standard assisted living disclosure statement.

Current provisions of law authorize MDoA to deny approval of a continuing care agreement that contravenes Title 10, Subtitle 4 of the Human Services Article. The bill expands that authority to include the denial of such a contract that contravenes other applicable statutory or common law provisions or principles. The bill also (1) clarifies that certain separate assisted living and comprehensive care agreements are not subject to MDoA's review; and (2) specifies that a provider must inform a subscriber of this fact when applicable.

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 (1) a table of contents; (2) if applicable, specified information regarding the use of entrance fees; and (3) if an extensive agreement is offered, a statement that an attorney or financial adviser should review the agreement with regard to coordination of benefits. In addition, the bill repeals provisions of law requiring a continuing care disclosure statement to contain other specified information related to (1) other facilities operated by the provider; (2) the provider's relationship to other providers; (3) special programming for individuals with particular needs; (4) notice of security procedures, the availability of locks, and the provider's right (if any) to enter a subscriber's room; and (5) certain obligations for arranging and overseeing medical care.

Under the bill, the Department of Health and Mental Hygiene (DHMH) must adopt, in consultation with MDoA, a standard version of the assisted living program services disclosure statement for use for assisted living that is included in continuing care. (The Office of Health Care Quality within DHMH currently licenses and regulates assisted living programs and comprehensive care facilities.) The bill further requires a provider to

include a copy of the standard assisted living services disclosure statement in its general marketing materials and to provide a copy to a subscriber within 30 days prior to the subscriber's admission.

Grievance Procedures and Subscriber Input

Under current law, a provider is required to establish an internal subscriber grievance procedure and must respond within 45 days after receipt of the written grievance. The bill specifies that a provider must, with respect to a subscriber's written grievance, respond in writing. In addition, the bill requires a provider to make available to subscribers its operating budget (within 30 days before implementation of the budget) and any budget amendments.

Required Disclaimer

Under the bill, all marketing materials stating that all or part of an entrance fee is refundable must include, in close proximity, a disclaimer in the same size font that states: "Carefully read the continuing care agreement for the conditions that must be satisfied before the provider is required to pay the entrance fee refund."

Operating Expenses and Transfer of Assets

The bill increases, after January 1, 2015, the operating reserve that a provider must set aside for each facility to 25% (from 15%) of the facility's net operating expenses for the most recent fiscal year and for which a certified financial statement is available. In addition, the bill restricts the pledging or encumbering of operating reserve assets.

The bill also clarifies when a proposed transfer of facility ownership or control is subject to approval by MDoA.

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 the Maryland Continuing Care Residents Association (MaCCRA) and LifeSpan (the largest senior care provider in Maryland). After a year of study by CCAC and its subcommittees, CCAC submitted 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 also agreed upon by both MaCCRA and LifeSpan.

Additional Comments: Recommendations made by CCAC but not agreed upon by both MaCCRA and LifeSpan are reflected in HB 1285, another departmental bill, and SB 962.

Additional Information

Prior Introductions: None.

Cross File: Although not designated as a cross file, SB 963 (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

Fiscal Note History: First Reader - March 20, 2011
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 1286

PREPARED BY: Maryland Department of Aging

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

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.