

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 485

(Senator Kelley, *et al.*)

Finance

Health and Government Operations

Continuing Care Retirement Communities - Regulation

This bill modifies provisions of law relating 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: None.

Analysis

Bill Summary/Current Law: The bill modifies provisions of law regarding the regulation of CCRCs – which offer a range of residential and health care services to serve aging residents and their changing needs – by the Maryland Department of Aging (MDoA).

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 in the agreement that the subscriber has also received (at least two weeks prior to signing) the continuing care agreement form and the current disclosure statement with the attachments, exhibits, and addenda. In addition, the bill requires a continuing care agreement to (1) have a table of contents; (2) state that the subscriber acknowledges reviewing all of the terms of the entrance fee refund clauses and provisions in the agreement; (3) include one of three model statements (or a similar statement) regarding the use of fees paid by subscribers of the community; (4) if the provider offers a continuing care agreement that promises a contractual entrance fee refund after occupancy, state whether the portion of the entrance fee to be refunded is held in trust or escrow for the subscriber after occupancy; and (5) if the payment of a contractual entrance fee refund after occupancy is conditioned on the re-occupancy or re-contracting of the subscriber's unit, state that the provider agrees to make reasonable efforts to satisfy the condition.

Current law specifies that, if a provider executes a separate assisted living or comprehensive care agreement, the provider is not required to submit the assisted living agreement, the comprehensive care agreement, or any requests for modification to MDoA for approval. Under the bill, a provider that uses a separate assisted living or comprehensive care agreement must state in its continuing care agreement that, if the subscriber wishes to transfer to assisted living or comprehensive care, the subscriber will be required to sign a separate agreement (that is not subject to MDoA approval) for those services. The bill specifies that the provider may, however, include a provision stating that assisted living or comprehensive care contracts and services are regulated by the Office of Health Care Quality within the Department of Health and Mental Hygiene. The bill also specifies that MDoA is authorized to deny approval of a continuing care agreement that contravenes applicable provisions of law.

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 matters. The bill requires a continuing care disclosure statement to contain additional information, including (1) a table of contents; (2) if the provider has a governing body, a description of the process used by the provider to select a subscriber member of the governing body and satisfy other specified requirements; (3) if the provider offers a contractual entrance fee refund after occupancy, a statement whether the portion of the entrance fee to be refunded is held in trust or escrow for the subscriber and, if applicable, a description of where and how the funds are held; and (4) if an extensive agreement is offered, a specific statement regarding coordination of benefits.

The bill also requires a facility's marketing materials, including disclosure statements, to include a specified disclaimer if the materials state that part or all of an entrance fee may be refundable.

Other Provisions

The bill specifies that a provider must respond in writing to a written grievance and clarifies that a grievance can be filed by a group of subscribers. The bill also requires the provider to make available to subscribers (1) the nonconfidential portions of the governing body's meeting minutes (or a summary of those portions) within one month of approval of the minutes; and (2) the facility's most recent finalized budget.

The bill modifies requirements (including whether MDoA approval is required) for the sale or transfer of a facility. Beginning January 1, 2014, the bill restricts the pledging or encumbering of operating reserve assets. Beginning January 1, 2023, the bill also increases 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.

If any provision of the bill or its application to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of the bill which can be given effect without the invalid provision or application, and for this purpose the provisions of the bill are declared severable.

Background: According to MDoA, which regulates 37 CCRCs across the State, concerns have arisen among various stakeholders regarding the administration of continuing care law – particularly as related 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 (CCAC), with membership including subscribers, providers, senior advocates, industry professionals, and representatives from the Maryland Continuing Care Residents Association (MaCCRA) (the principal continuing care residents association in Maryland) and LifeSpan (the principal continuing care provider association 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 policies; and (3) subscribers' rights.

Two departmental proposals introduced in 2011 (SB 962/HB 1285 and SB 963/HB 1286) reflected CCAC's recommendations, but neither proposal passed. MDoA advises that the present bill, as introduced, was developed by a small workgroup consisting of representatives from MaCCRA, MDoA, LifeSpan, and the General Assembly.

Additional Information

Prior Introductions: None.

Cross File: HB 556 (Delegate Hubbard, *et al.*) - Health and Government Operations.

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

Fiscal Note History: First Reader - February 29, 2012
mc/mwc Revised - Senate Third Reader - March 23, 2012
Revised - Enrolled Bill - April 17, 2012

Analysis by: Jennifer A. Ellick

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