

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1177 (Delegate Hill, *et al.*)
Health and Government Operations

Continuing Care Retirement Communities - Subscriber Rights and Provider Duties

This bill (1) alters requirements for subscriber input, including the membership of governing bodies of continuing care retirement communities and confidentiality requirements; (2) establishes requirements for providers and subscribers of continuing care retirement communities; and (3) requires the Secretary of Aging to appoint a Continuing Care in a Retirement Community Ombudsman for each county, if applicable, to monitor the rights and protections provided for a subscriber or a potential subscriber. A provider may not infringe on the civil liberties of a subscriber that are protected by the State and national constitutions. The Secretary of Aging must adopt regulations regarding the Continuing Care in a Retirement Community Ombudsman.

Fiscal Summary

State Effect: General fund expenditures for the Maryland Department of Aging (MDOA) *may* increase by an indeterminate but potentially significant amount beginning FY 2025 to appoint ombudsmen, as discussed below. Revenues are not likely affected.

Local Effect: Local expenditures *may* increase by an indeterminate amount beginning in FY 2025, as discussed below. Revenues not likely affected.

Small Business Effect: None.

Analysis

Bill Summary:

Continuing Care Agreements

Before an individual signs a continuing care agreement (1) an individual may visit a facility, including the amenities associated with independent living and (2) a provider must provide an individual a list written in plain language stating the services guaranteed by a continuing care agreement and services that are included, but not guaranteed, by a continuing care agreement.

A subscriber may:

- select an independent living apartment of their choice based on the availability of such apartments and the subscriber's financial qualifications, and choose how to furnish such an apartment, consistent with the terms of the continuing care agreement and applicable fire and safety regulations;
- individually or through a designated representative, refuse medication or treatment offered by the provider;
- participate fully in discussions with the provider regarding the need to transfer the subscriber to an assisted living program or skilled nursing facility;
- with or without participation of a provider, or the governing body of the continuing care facility, freely assemble to share information with other subscribers or learn about issues facing the subscriber community;
- operate informal activities that do not negatively impact other subscribers or require resident association funds;
- advocate for a subscriber's own well-being, rights, or preferences regarding issues facing a continuing care retirement community; and
- participate in a resident association.

Unless a resident association is in operation in a continuing care retirement community, a subscriber may establish and operate a resident association for subscribers residing in a facility. A resident association must represent the interests of subscribers in a facility, including during meetings with the governing body of a facility or provider. A resident association may collect fees or other contributions to maintain a resident association fund. A resident association may use a resident association fund to support activities for subscribers and advocate for the well-being, rights, and preferences of subscribers in a facility.

A provider must:

- deliver complete and prompt fulfillment of the services and terms set in a continuing care agreement and any other contract made with a subscriber;
- provide the benefits of living in continuing care in a retirement community and enforce rules for living in continuing care in a retirement community without prejudice, regardless of the subscriber's age, gender, sexual orientation, religion, race, economic status, professional background, political affiliation, advocacy of issues in the retirement community, or involvement in a resident association;
- conduct an annual survey to evaluate subscribers' satisfaction with the fulfillment of the services and terms set in a continuing care agreement and other contracts made with subscribers;
- provide a copy of a continuing care agreement or contract signed by a subscriber to the subscriber (or the subscriber's designated representative) on request;
- every six months, report to a subscriber the significant issues affecting the continuing care retirement community that affect subscribers' well-being or financial investment in a continuing care agreement, as specified;
- annually disclose to a subscriber the finances of an entity that owns or has a stake in a continuing care retirement community or facility that a subscriber is part of and if an entity owns or has an interest in multiple continuing care retirement communities or facilities, annually disclose to a subscriber the finances of the entity to a subscriber in each continuing care retirement community or facility the entity owns or has interest in;
- on request, provide a report written by a certified actuary affirming that a provider has sufficient funds to provide for the future of the continuing care retirement community;
- inform a subscriber of a plan to sell or transfer ownership of a continuing care retirement facility (1) in accordance with the bill or (2) as soon as possible, if the sale or transfer will occur under emergency circumstances;
- (1) at least 90 days before changing a fee charged to a subscriber, notify the subscriber of the plan to change the fee; (2) provide an opportunity for a subscriber to provide feedback on the planned fee change; and (3) respond in writing to feedback from a subscriber regarding a planned fee change; and
- (1) before implementing a change to the delivery of health care services, food services, and facilities maintenance, including staffing levels or staff credentialing, notify the subscriber of the planned change; (2) provide an opportunity for feedback; and (3) respond in writing to feedback from a subscriber regarding a planned change in the delivery of services.

If a subscriber is in an assisted living program or a skilled nursing facility, a provider must regularly inform the subscriber's family members, as designated by the subscriber, about
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the subscriber's condition and care plan. A provider may set a maximum number of family members that a subscriber may designate. The maximum number of family must not be less than two family members and an alternate family member to be informed if one of the other two family members is unavailable.

Subscriber Input

If a provider has a governing body, at least *three* of the provider's subscribers must be full and regular members of the governing body. A member of the governing body must be a subscriber at a facility in the State and be elected by the resident association of the facility in accordance with the bylaws of the resident association. The bill repeals the requirement that the governing body confer with the resident association at each of the provider's facilities before the subscriber officially joins the governing body.

A subscriber member of a governing body may report on nonconfidential deliberations, actions, and policies of the governing body to the resident association. A provider may designate a portion of a governing body meeting to be confidential if the governing body discusses individual personnel or individual subscriber's health issues. A provider may not prevent the access of a subscriber or a designated representative of a subscriber to a nonconfidential portion of a meeting of the governing body unless the portion of the meeting is closed in compliance with the bill or a federal, State, or local law.

Continuing Care in a Retirement Community Ombudsman

If applicable, the Secretary of Aging must appoint a Continuing Care in a Retirement Community Ombudsman for each county to monitor the rights and protections provided in the bill for a subscriber or a potential subscriber. Subscribers and family members of subscribers may report complaints, compliments, and comments to the ombudsman for the county where the subscriber's retirement community facility is located. A complaint, compliment, or comment made to the ombudsman is public record.

Current Law:

Continuing Care Agreements

Under § 10-401 of the Human Services Article, "continuing care in a retirement community" means providing shelter and providing either medical and nursing or other health related services or making the services readily accessible through the provider or an affiliate of the provider, whether or not the services are specifically offered in written agreement for shelter (1) to an individual who is at least 60 years of age and not related by blood or marriage to the provider; (2) for the life of the individual or for a period exceeding one year; and (3) under one or more written agreements that require a transfer of assets or

an entrance fee notwithstanding periodic changes. “Continuing care agreement” means an agreement between a provider and a subscriber to provide continuing care.

A continuing care agreement must include 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.

Subscriber Input

At least once a year, each provider must hold a meeting open to all of the provider’s subscribers. The provider must summarize their operations, significant changes from the previous year, and goals and objectives for the next year, as well as answer subscribers’ questions.

If a provider has a governing body, at least one of the provider’s subscribers must be a full and regular member of the governing body. If a provider owns or operates more than three facilities in the State, the governing body must include at least one of the provider’s subscribers for every three facilities. A subscriber member of the governing body must be selected according to the same general written standards and criteria used to select other members of the governing body. The governing body must confer with the resident association at each of the provider’s facilities before the subscriber officially joins the governing body.

If a provider does not have a governing body, the provider must appoint a select committee of its officers or partners to meet at least twice a year with the resident association at each of its facilities to address concerns of the subscribers and ensure their opinions are relayed to all officers or partners of the provider.

Long-Term Care Ombudsman

The State Long-Term Care Ombudsman Program was established under federal mandate through the Older Americans Act. Long-term care ombudsmen are advocates (volunteers or paid employees) for residents of nursing homes, board and care homes, assisted living facilities, and similar adult care facilities. They work to resolve problems of individual residents and to bring about changes at the local, state, and national levels that will improve residents’ care and quality of life. The Secretary of Aging is required to adopt regulations necessary to implement the State Long-Term Care Ombudsman Program.

Area Agencies on Aging

In Maryland, each of the 23 counties and Baltimore City designate an area agency on aging (AAA). The agency may be a unit of local government or a private, nonprofit corporation. AAAs provide a variety of adult services, incorporating assisted living, protective services, and temporary disability programs.

Each AAA must operate a single point-of-entry program to access the needs of seniors and their caregivers and provide appropriate services, including (1) providing current information on available programs, services, or benefits; (2) determining the service needs of each senior who requests service; (3) processing requests for service from seniors; (4) providing access to available public and private programs and services for seniors; (5) monitoring the outcome of requests for service or information; and (6) arranging for individual screenings to determine the service needs of a frail or health-impaired senior.

State Fiscal Effect: The bill requires the Secretary to appoint a Continuing Care in a Retirement Community Ombudsman for each county, if applicable, and to adopt associated regulations. MDOA can adopt any regulations using existing budgeted resources.

With regards to appointing an ombudsman for each jurisdiction with a continuing care retirement community (currently 13 jurisdictions), MDOA advises that it is unclear if the local ombudsman will require direct oversight from MDOA, if the positions will be permanent employees or volunteers, and if the program is to be funded at the State or local level. Additionally, MDOA advises that, as the department oversees continuing care retirement community facilities, housing the Continuing Care in a Retirement Community Ombudsman program within MDOA may create a conflict of interest.

MDOA advises that current staff and resources are not sufficient to establish a new ombudsman program and that general fund expenditures are likely to increase by a potentially significant amount should the State be required to fund ombudsmen under the bill. *For illustrative purposes only*, to the extent that the cost for each ombudsman is \$50,000, MDOA expenditures increase by \$650,000 on an annual basis.

Alternatively, to the extent that the Secretary appoints volunteers to serve as a Continuing Care in a Retirement Community Ombudsman in each applicable jurisdiction, the Department of Legislative Services notes that minimal administrative costs are likely incurred for administrative oversight of the 13 ombudsmen by MDOA.

Local Fiscal Effect: Since the Long-Term Care Ombudsman Program currently consists of both volunteers and paid employees, it is unclear if the Continuing Care in a Retirement Community Ombudsman in each county will be a paid employee or a volunteer or if the position will be funded at the State or local level. To the extent that the county must hire

an individual as the ombudsman, local expenditures increase accordingly beginning in fiscal 2025. As noted above, to the extent that the Secretary appoints volunteers to serve as ombudsmen, any additional costs for the 13 local jurisdictions with continuing care retirement communities are assumed to be minimal.

Additional Comments: As of January 1, 2023, there were 38 operating or approved continuing care retirement communities in Maryland. MDOA advises that there are approximately 20,000 residents in continuing care retirement communities in the State.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

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