



January 5, 2022

By E-Mail

Aaron J. Greenfield, Esquire
Greenfield Law, LLC
11155 Dolfield Boulevard, Suite 200
Owings Mills, Maryland 21117

Re: Use of Excluded Comprehensive Care Facility Beds
at a Continuing Care Retirement Community

Dear Mr. Greenfield:

I am writing to you in response to your inquiries over the past several months regarding the permitted use by a continuing care retirement community (CCRC) of comprehensive care facility (CCF or nursing home) beds that were obtained through an exclusion from Certificate of Need (CON) issued by the Maryland Health Care Commission (the Commission) under COMAR 10.24.01.03K "for the exclusive use of the provider's subscribers who have executed continuing care agreements and paid entrance fees that are at least equal to the lowest entrance fee charged for an independent living unit or an assisted living unit before entering the continuing care community, regardless of the level of care needed by the subscribers at the time of admission." Specifically, you ask whether a CCRC that establishes a continuing care at home (CCAH) program through the Maryland Department of Aging (Aging) can use CON-excluded beds at the CCRC for the provision of nursing home care to the CCAH's subscribers. For reasons stated in this letter, Commission staff concludes that the CON-excluded CCF beds at a CCRC cannot be used by a CCAH member.

In looking at this issue, staff and counsel reviewed the applicable statutes. In 1985, Article 70B defined continuing care as meaning "furnishing *shelter* and either medical and nursing services or other health related benefits to an individual 60 years of age or older not related by blood or marriage to the provider for the life of the individual or for a period in excess of one year under a written agreement that requires a transfer of assets or an entrance fee notwithstanding periodic charges." Maryland Annotated Code, Article 70B, § 7(b)(1) (1985)(emphasis added).

Continuing care at home was created in 1996, with the statute (then Article 70B, § 22A) defining continuing care at home as

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providing either directly or by contractual arrangement medical, nursing, or other health related services to an individual 60 years of age or older who is not related by blood or marriage to the provider for the life of the individual or for a period in excess of 1 year under a written agreement that requires a transfer of assets or an entrance fee notwithstanding periodic charges.

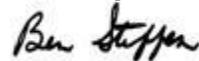
Maryland Annotated Code, Article 70B, § 22A (1996).

When the plain language in a statute – particularly Article 70B, which was recodified in the Human Services Article in 2007 – is not clear, the legislative history is examined to understand legislative intent. The Article 70B legislative history shows that the 2007 recodification created confusion over CCAH, despite the statement that it was to be a “nonsubstantive revision and may not otherwise be construed to render any substantive change in the law of the State.” Thus, there was no legislative intent to expand the CON-exclusion regarding CCF beds at a CCRC to CCAH subscribers. Also note that Health-General §19-114(d)(2)(ii) was not changed.

Furthermore, the State Health Plan Chapter at COMAR 10.24.20.07(B)(11) defines “continuing care” as “furnishing shelter plus services consistent with COMAR 32.02.01”. Note that this definition does not include a citation to the Department of Aging’s COMAR 32.02.02 regulations governing continuing care at home. Finally, nowhere in the Commission’s existing statutes and regulations is there a reference, or cross-reference to another Maryland statute or regulation, regarding “continuing care at home.” The fact that the Commission’s existing statutes and regulations are silent on continuing care at home, supports the conclusion that the CON exclusion of beds at CCRCs does not apply to CCAH.

The only avenue that I can recommend to you is to introduce legislation in the 2022 Legislative Session to change the statute to permit the admission of CCAH subscribers to CON-excluded beds at a CCRC.

Sincerely,



Ben Steffen

Executive Director

cc: Rona Kramer, Secretary MDOA
Andrew Pollak, MD, Chairman
Lorraine Webb, MDOA
Jeff Myers, AAG, MDOA
Rajni Sekhri, AAG, MDOA
Allison Ciborowski, Leading Age
Wynee E. Hawk, Chief, Certificate of Need



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Linda Cole, Chief, Long-Term Care Policy and Planning

Sarah E. Pendley, AAG



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