

LeadingAge - 2022 - CCAH - Steffen Letter.pdf

Uploaded by: Aaron Greenfield

Position: FAV



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

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.

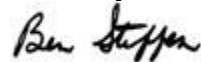
Maryland Annotated Code, Article 70B, § 22A (1996).

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



Aaron J. Greenfield, Esquire

January 5, 2022

Page 3

Linda Cole, Chief, Long-Term Care Policy and Planning
Sarah E. Pendley, AAG



LeadingAge Maryland - 2022 - SB 804 - CCAH(1).pdf

Uploaded by: Aaron Greenfield

Position: FAV



576 Johnsville Road
Sykesville, MD 21784

TO: Finance Committee
FROM: LeadingAge Maryland
SUBJECT: Senate Bill 804, Continuing Care at Home - Certificate of Need - Exemption
DATE: March 10, 2022
POSITION: **Favorable**

LeadingAge Maryland supports Senate Bill 804, Continuing Care at Home - Certificate of Need – Exemption.

LeadingAge Maryland is a community of more than 135 not-for-profit aging services organizations serving residents and clients through continuing care retirement communities, affordable senior housing, assisted living, nursing homes and home and community-based services. Our mission is to expand the world of possibilities for aging in Maryland. We partner with consumers, caregivers, researchers, public agencies, faith communities and others who care about aging in Maryland.

The population in Maryland, and across the country, continues to age. As we age, each of us wants the autonomy to make choices about where we live and our healthcare. More and more, we are seeing a trend of individuals preferring to age-in-place. In fact, according to a recent AARP survey, roughly 90% of American seniors wish to live at home for as long as possible. According to AARP, older adults “vastly prefer aging in place to facility care, even in cases where physical or cognitive decline makes it difficult to live independently.” Unfortunately, older adults do not always have access to the necessary supports and services to remain living independently and well in their own homes.

LeadingAge Maryland represents the vast majority of Continuing Care Retirement Communities (CCRC) in Maryland. In a CCRC, when an individual moves into a CCRC community, they have access to a continuum of living and care services to support them throughout their lifetime. Our members, not for profit organizations, are mission focused and invested in expanding supports and services outside of their four walls, and into the greater community. Continuing Care at Home (CCAH) is one model that has proved useful in meeting older adults where they are, reducing the need for costly nursing home care, and supporting older adults in aging well wherever they call home. Continuing care at home provides a retirement option for older adults who wish to continue living independently wherever they call home, with the assurance and peace of mind knowing that they have guaranteed lifetime access to a wide range of health care should their health needs ever change.

CCAH is growing in popularity across the country, currently there are 37 CCAH programs nationwide. 5 in PA, 4 in VA. The focus of CCAH is coordinated long-term care plan for healthy,

independent seniors who want to stay at home. CCAH is a more affordable option, has the potential to support different socio-economic and diverse groups of older Marylanders. Subscribers pay a onetime membership fee – a typically 75 year old individual might expect to pay \$26-66k to join, then between \$400-600 monthly. Services of a CCAH plan include: Care Coordination, Home Health Aides, Home Assessment, Companions, Live-in Companion / Home Health Aide, Assisted Living, Medication Management, and if needed, assisted living or skilled nursing care.

LeadingAge Maryland has sought to promote continuing care at home in the State as outlined in the State Health Plan Chapter at COMAR 10.24.20.07.

Specifically, for the benefit of our members, LeadingAge Maryland has sought clarity on whether a continuing care retirement community (CCRC) that establishes a continuing care at home (CCA) 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. Several CCRCs in Maryland wish to pursue CCAH but want to be able to offer subscribers skilled nursing care on their own campus. Currently, this is not possible.

According to the Maryland Health Care Commission, CON-excluded beds at a CCRC cannot be used by a Continuing Care at Home member. In his analysis, Ben Steffen makes the point the statute refers to "furnishing shelter" and that there was no legislative intent to expand the CON-exclusion regarding CCF beds at a CCRC to CCAH subscribers. See attached letter.

In order to actually utilize CCAH, this legislation makes clear that a CCRC can establish a CCAH program and use CON-excluded beds at the CCRC for the provision of nursing home care to the CCAH's subscribers.

For these reasons, LeadingAge Maryland respectfully requests a favorable report on Senate Bill 804.

For additional information, please contact Aaron J. Greenfield, 410.446.1992

SB 804 - Continuing Care at Home Position Stmt (Su

Uploaded by: Ben Steffen

Position: FAV



2022 SESSION
POSITION PAPER

BILL NO: SB 804

COMMITTEE: Senate Finance Committee

POSITION: Support

TITLE: SB 804 - Continuing Care at Home - Certificate of Need - Exemption

BILL ANALYSIS

SB 804 - Continuing Care at Home - Certificate of Need - Exemption provides an exemption from the certificate of need requirement. This exemption does not include facilities that are for the exclusive use of the provider's subscribers who have executed continuing care at home agreements and paid certain entrance fees into a continuing care community and generally relating to continuing care at home and exemptions to certificate of need.

POSITION AND RATIONALE

The Maryland Health Care Commission supports SB 804.

Continuing Care Retirement Communities (CCRCs) can establish comprehensive care facilities (CCFs or nursing homes) without obtaining a Certificate of Need (CON). This exception to the CON law limits admission to such CCRC health care facilities, in general, to continuing care contract purchasers. About half of the CCRCs in Maryland operate such limited-use CCFs.

This bill would allow CCRCs with exceptional CCFs to admit purchasers of "continuing care at home" contracts, sold by the CCRC. "Continuing care at home" is a continuing care contract option, untested so far in Maryland, that differs from the traditional continuing care contract, in which purchasers reside as independent living or assisted living residents on the CCRC campus. Such "at home" contracts are required to provide that a CCF is available as an element of the continuing care at home continuum.

MHCC supports this narrow change in the statute. The original intent of this part of the law was to allow continuing care contract holders to have limited-use CCFs on their retirement community campuses, without the interference of CON regulation. To the extent that continuing care at home is now available in Maryland, and may be tested as a viable

enterprise, it is logical to make the “at home” option contract holders eligible for the same CCF services as the other types of continuing care contract holders. This makes sense from the interest of the public seeking continuing care agreements, making it easier for existing CCRCs to market more contract options to consumers with an assurance of available CCF services within the continuum.

For these reasons the Commission asks for a favorable report on SB 804.

Note: The Maryland Health Care Commission is an independent State agency, and the position of the Commission may differ from the position of the Maryland Department of Health.



SB0804_FAV_LifeSpan_Continuing Care at Home - CON

Uploaded by: Danna Kauffman

Position: FAV



*Keeping You Connected...Expanding Your Potential...
In Senior Care and Services*

TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Pamela Beidle

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer

DATE: March 10, 2022

RE: **SUPPORT** – Senate Bill 804 – *Continuing Care at Home – Certificate of Need – Exemption*

On behalf of the LifeSpan Network, the largest and most diverse senior care provider association in Maryland representing nursing facilities, assisted living providers, continuing care retirement communities, medical adult day care centers, senior housing communities and other home and community-based services, we **support** Senate Bill 804.

Continuing care at home (CCAH) provides a retirement option for older adults who wish to continue living independently wherever they call home but have access to a wide range of health care should their health needs ever change. To better utilize CCAH, Senate Bill 804 allows a continuing care retirement community that establishes a CCAH program to use CON-excluded beds at the CCRC for the provision of nursing home care to the CCAH's subscribers.

As Maryland's senior population continues to increase, Maryland must develop innovative approaches to care delivery. Now more than ever, seniors are searching for the ability to receive necessary care in their homes, rather than moving to other health care facilities. CCAH is a program currently authorized in Maryland but has been underutilized. With this small change, the hope is that the CCAH model will become more robust in Maryland and provide one more option for Maryland seniors. We urge a favorable vote on Senate Bill 804.

For more information call:

Danna L. Kauffman
Pamela Metz Kasemeyer
410-244-7000

SB 804_Jeff Myers_fav without amendment.pdf

Uploaded by: Jeff Myers

Position: FAV

Jeffrey H. Myers
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JeffreyHMyersProBono@gmail.com

Written testimony in Support SB 804 **without** amendment

I am Jeffrey H. Myers. For 26 years, from 1995 up to and including 2021, I was Principal Counsel to the Maryland Department of Aging. I support the passage of SB 804 without amendment.

A potential amendment to SB 804 is afoot that would eliminate that pre-sales requirement from those necessary to obtain an initial certificate to operate as a continuing care at home contractor. Amending HB 972 or SB 804 to eliminate the pre-sales requirement for new continuing care at home providers found in COMAR 32.02.02.09B(2) and (3) would be unwise and expose elderly consumers to unnecessary risk.

The continuing care at home regulations were drafted in 1999 by a group of providers, actuaries, and Department of Aging staff. The various risks to consumer and providers were carefully thought through and balanced. The regulatory schema is rather complex. While regulations should always be examined to see if they need to be updated, one needs to be careful when adjusting a carefully balanced system. Changes made quickly on the fly often have unforeseen and adverse consequences. The issue sought to be addressed by The Wesley can be tackled by regulatory revisions. Sweeping changes to statutory language, which may have unintended consequences, is not necessary.

Under the current regulations, an initial certificate is required in order to begin full operations as a continuing care at home provider. After an applicant obtains a preliminary certificate, it can move to satisfy what is referred to as the pre-sales requirement. The pre-sales requirement is one of several requirements that must be met in order to obtain an initial certificate. The pre-sales requirement found at 32.02.02.09B(2) and (3) is that the applicant has to execute agreements with the greater of either: a) 10 percent of the subscribers needed to reach the breakeven point between expenses and revenue or b) 30 subscribers. In addition, the applicant has to collect a deposit equal to at least 10 percent of the entrance fee from any subscriber to be counted against the pre-sales requirement.

It is important to understand that a continuing care at home contract has a long-term care insurance policy baked into it. The contract takes up front entrance fees and periodic fees in return for promising coverage for long term care services if they are needed in the future. The only reason that continuing care at home contracts are not subject to the rules and regulations of the Insurance

Commissioner is Human Services Section 10-402(b)(1)(ii), which provides an exemption from the Insurance Article to continuing care providers.

This exemption exists for continuing care at home because a continuing care at home provider from Pennsylvania, Friends Life Care, came to the Department of Aging requesting to be covered as continuing care to escape the more onerous requirement of the Insurance Article. I was with the Department at the time. The Department supported this effort and the continuing care at home statute was passed circa 1997. The Department and Friends Life Care, along with actuaries and outside continuing care experts, then developed over the course of several years the regulatory requirements of 32.02.02 “Certificate of Registration for Continuing Care at Home Providers.” I participated in the development of those regulations and signed off on them for legal sufficiency.

The pre-sales requirement has been in that regulatory structure since the very beginning in 2000. To legally begin marketing a continuing care at home product to consumers, a provider has to submit to the Department for approval, among other things, an actuarial study (because there is long term insurance type risk), financial projections, a market study, and marketing materials. At this point a provider can obtain a preliminary certificate and start making “pre-sales,” i.e., taking deposits and signing contracts. The marketing materials can look great and the finance numbers can all add up correctly, but until you start marketing and trying to sell the product, you do not know for sure if the market in question is going to buy enough policies to make the product financially viable. As they say, “the proof of the pudding is in the eating.” This is the rationale for the “pre-sales” requirement in COMAR 32.02.02.09B(2) and (3). Deeds (actual sales) are mightier than flashy brochures and financial projections based on assumptions the accountants disclaim.

Recently a continuing care retirement community proposed for Harford County, Eva Mar at Carsins Run, returned its preliminary certificate because it could not sell enough of its product to be viable. It could not meet the pre-sales requirement. This happened even though its actuarial study and financial projections all balanced correctly and its marketing materials and market study were found to be acceptable.

Fortunately, all the people who put down deposits for Eva Mar at Carsins Run over the years will get all their money back because until the pre-sales requirement is met, all deposits have to be held in escrow. The proposed amendment will eliminate this requirement for continuing care at home providers because an initial certificate will be able to be obtained at the same time as a preliminary certificate, in which case deposits will be able to go directly into revenue and spent on more marketing and other expenses.

Eva Mar at Carsins Run has spent millions of dollars on marketing over the years. If its initial subscribers’ deposits had not been held in escrow, but gone into revenue, it is hard to believe that there would have been enough money left to refund all the deposits.

The proponents of the amendment say that the pre-sales requirement is unnecessary because there is a \$500,000 capital reserve requirement that all continuing care at home providers must meet before obtaining its initial certificate and beginning the provision of services. However, the group

that developed the continuing care at home regulations did not see things that way at all. While there was debate about what the pre-sales requirement should be—one option considered was 100 contracts—none of the experts involved considered it redundant of the capital reserve requirement. The capital reserve requirement is a minimum base line to even be considered viable as a provider. The Insurance Article's minimum capital requirement in 2000 was \$1,000,000. If a new provider took in just 25 \$25,000 deposits that would be \$625,000. If it turns out that the product is not marketable, i.e., not enough people will buy contracts, where will the money come from to refund those deposits? Twenty-five policy holders is not enough to make a viable book of business.

Eliminating the pre-sales requirement places too much risk on the elderly, initial subscribers. If an applicant cannot get 10% deposits from 10% of the number of people needed to make the enterprise financially viable and has to close down, the risk to those initial subscribers should be on the applicant. Once an applicant gets to 10% and has its initial certificate, the risk shifts to the subscribers. Getting to 10% does not assure financial viability, but that is where the regulatory drafters drew the line for shifting the risk. It can still be risky for seniors buying in early, but at least the initial subscribers are protected until the 10% threshold is reached. Eliminating that minimal protection is unwarranted.

If the General Assembly feels that the continuing care at home regulatory structure should be reviewed and revised, I would be happy to participate in such a work group.

HFAM Testimony SB 804.pdf

Uploaded by: Joseph DeMattos

Position: FAV



**TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE**

March 10, 2022

Senate Bill 804: Continuing Care at Home - Certificate of Need – Exemption
Written Testimony Only

POSITION: FAVORABLE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our support for Senate Bill 804. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to healthcare providers. Our members provide services and employ individuals in nearly every jurisdiction of the state.

Senate Bill 804 provides that the definition of a health care facility, for the purpose of providing an exemption from the certificate of need requirement, does not include certain facilities that are for the exclusive use of the provider's subscribers who have executed continuing care at home agreements and paid certain entrance fees.

Specifically, this legislation provides an option for Continuing Care Retirement Communities (CCRCs) to have a continuing care at home agreement for individuals that live in the community-at-large (not on the campus of the CCRC) and for those individuals to pay entrance fees and use nursing home certificate of need (CON) exempt beds at the CCRC.

Senate Bill 804 does not amend the calculation of the number of exempt nursing home beds based on independent living units. This legislation does not change the definition of "independent living units," nor does it change the calculation of the exempt bed formula. It would only affect CCRCs that currently have CON excluded beds. Finally, to be explicit, this bill will have no impact on certificates of need and per the State Health Plan, the formula does not change for SNF beds.

Continuing care at home provides a retirement option for older adults who wish to continue living independently wherever they call home, with the assurance and peace of mind knowing that they have guaranteed lifetime access to a wide range of health care should their health needs ever change.

Continuing Care at Home (CAAH) is one model that has proved useful in meeting older adults where they are and in supporting older adults in aging well at home. The focus of CCAH is a coordinated long-term care plan for healthy, independent seniors who want to stay at home. CCAH is a more affordable option and has the potential to support different socio-economic and diverse groups of older Marylanders.

HFAM has long advocated that Marylanders in need of long-term care should receive care in a clinically appropriate setting that meets both their medical, safety, and personal needs. HFAM has also long supported access to care and adequate funding across settings.

If a person can safely receive care support at home, then they should certainly have the opportunity to do so. The Continuing Care at Home (CCAH) is one model that has great potential on that front.

This legislation makes clear that a CCRC can establish a CCAH program and use CON-excluded beds at the CCRC for the provision of nursing home care to the CCAH's subscribers.

The vast majority of people who receive care in Maryland skilled nursing and rehabilitation centers are medically complex and require round-the-clock care. Most often, they do not have family members who can provide the high level of support that they need at home. Therefore, they are unable to safely receive care at home. If not cared for in skilled nursing centers, these residents and patients would otherwise receive care in a hospital at a much higher cost to the state and other payors—putting at risk Maryland's Total Cost of Care Contract.

It is a positive step forward if the Continuing Care at Home (CCAH) model is one of several public policy approaches to delay or prevent unnecessary long-term care nursing home residency that also taps in to the value and clinical expertise of skilled nursing centers while keeping older Marylanders engaged with their family and community.

For these reasons, we request a favorable report on Senate Bill 804.

Submitted by:

Joseph DeMattos, Jr.
President and CEO
(410) 290-5132

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Position: FAV



2022 SESSION
POSITION PAPER

BILL No: SB 804

COMMITTEE: Senate Finance Committee

POSITION: Support

TITLE: SB 804 - Continuing Care at Home - Certificate of Need - Exemption

BILL ANALYSIS

Senate Bill (SB) 804 - Continuing Care at Home - Certificate of Need - Exemption provides that certain continuing care retirement communities with comprehensive care facilities exempted from certificate of need requirements may serve persons in the exempted comprehensive care facilities, if those persons have executed continuing care at home agreements with and paid certain entrance fees to the retirement community.

POSITION AND RATIONALE

The Maryland Health Care Commission supports SB 804.

Continuing Care Retirement Communities (CCRCs) can establish comprehensive care facilities (CCFs or nursing homes) without obtaining a Certificate of Need (CON). This exception to the CON law limits admission to such CCRC health care facilities, in general, to continuing care contract purchasers. About half of the CCRCs in Maryland operate such limited-use CCFs.

This bill would allow CCRCs with exceptional CCFs to admit purchasers of continuing care at home contracts, sold by the CCRC. Continuing care at home is a continuing care contract option, untested so far in Maryland, that differs from the traditional continuing care contract, in which purchasers reside as independent living or assisted living residents on the CCRC campus. Such “at home” contracts are required to provide that a CCF is available as an element of the continuing care at home continuum.

MHCC supports this narrow change in the statute. The original intent of this part of the law was to allow continuing care contract holders to have limited-use CCFs on their retirement community campuses, without the interference of CON regulation. To the extent that continuing care at home is now available in Maryland, and may be tested as a viable

enterprise, it is logical to make the at home option contract holders eligible for the same CCF services as the other types of continuing care contract holders. This makes sense from the interest of the public seeking continuing care agreements, making it easier for existing CCRCs to market more contract options to consumers with an assurance of available CCF services within the continuum.

For these reasons, the Commission asks for a favorable report on SB 804.

Note: The Maryland Health Care Commission is an independent State agency, and the position of the Commission may differ from the position of the Maryland Department of Health.



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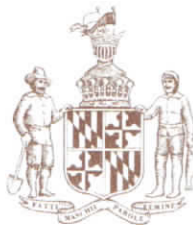
Uploaded by: Pamela Beidle

Position: FWA

PAMELA G. BEIDLE
Legislative District 32
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Finance Committee

Vice Chair
Executive Nominations Committee



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

March 10, 2022

SB 804

Continuing Care at Home – Certificate of Need – Exemption – Elimination of Execution of a Required Number of Agreements and Corresponding Deposits

Good Afternoon Chair Kelley, Vice Chair Feldman and Members of the Committee;

Thank you for the opportunity to present SB804, Continuing Care at Home, Certificate of Need to you.

Recently, AARP conducted a survey and found that more than 90% of older adults wish to remain in their homes as they age. Unfortunately, individuals do not always have access to the supports and services that would allow them to remain in their home and age well. This is the focus of Continuing Care at Home (CCAH) a coordinated long-term care plan for healthy, independent seniors who want to stay at home.

CCAH is growing in popularity across the country. There are 37 programs nationwide, with 5 in PA and 4 in VA. It is a more affordable option compared to moving into a traditional Continuing Care Retirement Community. This would allow greater access to older Marylanders in a variety of socio-economic groups. Typically, subscribers pay a onetime membership fee – a 75 year old individual might expect to pay \$26-66k to join, then between \$400-600 monthly. In return they receive services such as:

- Care Coordination,
- Home Health Aides,
- Home Assessment,
- Companions,
- Live-in Companion / Home Health Aide,
- Assisted Living, Medication Management, and
- if needed, assisted living or skilled nursing care.

SB804 will help eliminates barriers and expand the availability of continuing care programs to more Marylanders allowing them to age in place at home. Our current certificate of need laws would not allow CCAH subscribers to access beds at a CCRC's assisted living or skilled nursing facilities. SB 804 will permit CCRCs in Maryland who wish to pursue a CCAH program, who have CON-excluded beds, to be able to offer subscribers access to skilled care on their own campus.

I respectfully request a favorable report on SB 804.