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**SB076 – SUPPORT**  
**Continuing Care Retirement Communities - Governing Bodies, Grievances, and**  
**Entrance Fees**

Senate Finance Committee February 8, 2024

Dear Chair Beidle and Members of the Senate Finance Committee:

My name is Daniel O. Tracy and I am testifying in favor of SB76.

I am a resident of the Mercy Ridge Retirement Community in Timonium, Maryland, where I serve as the President of the Mercy Ridge Chapter of the Maryland Continuing Care Residents Association (“MaCCRA”).

The proposed Bill submitted by Senator Lam on behalf of MaCCRA seeks to modify three sections of Maryland’s existing continuing care law dealing with Resident Input, Entrance Fee Refunds and Internal Grievance Procedures.

**Resident Input.**

A continuing care retirement community, a “CCRC”, is a unique entity given the status of the residents. Practically, it is like a cooperative corporation, where the residents make a substantial up front investment and long term commitment for a exclusive residential unit. But, legally, the CCRC is not like a cooperative, in that the residents do not have any voting rights, despite the fact that they are the principal beneficiaries of the enterprise, the reason for its existence. The CCRC residents are seniors who have made this investment and commitment essentially for the rest of their lives in reliance upon an extensive array of representations and promises made to them by the CCRC entity. Consequently, it is a matter of basic equity that the residents have some meaningful participation in the policies and operations of the CCRC.

Current law on resident input simply provides that the management board elect one resident to serve on the board after consultation with the Resident’s Association. That is it; and many CCRCs do not provide any more in the way of access to management than what is legally required. Additionally, the single resident board member has been of minimal benefit since he/she has been muzzled by an unnecessarily restrictive view of their fiduciary obligations preventing them from discussing any board management matters with the residents, not just confidential matters. I believe that there is no reason why a resident board member cannot discuss non-confidential corporate matters directly with residents and the Resident Association and still faithfully maintain his/her fiduciary obligations to the corporation.

This bill proposes: (i) that least two resident members serve on the CCRC Board rather than one, (ii) that they be elected by the Resident Association or its equivalent, (iii) that they be expressly enabled to report to the residents on the Board's nonconfidential deliberations, actions and policies, and that (iv) a CCRC officer review the current financial statements of the facility with a committee of the residents.

These proposals are a relatively modest enhancement of the resident input provisions of Maryland's law which I believe will not only make their participation more effective; but, in providing for greater transparency, it will also help discourage the we-against-them mentality prevalent in many if not most of our communities.

A few communities already have implemented some of our proposals. For example, at Mercy Ridge, where I live, we already have two residents on the management Board and the Director of Finance meets quarterly with a residents finance committee to review the facility's financial statements. These access enhancements should be made available to the residents of **all** CCRCs.

### **Entrance Fee Refunds.**

To reside in a CCRC, a resident must pay a substantial sum of money at the outset of his/her residency, referred to as an entrance fee. Depending on the plan chosen by the resident, all or a portion of the entrance fee may be refunded without interest upon the termination of their residency.

Maryland's existing statute addressing the refund of entrance fees provides that, for those units having an entrance fee refund obligation, the fee will be refunded upon the re-sale of the unit. There is no time period specified for the re-sale of the unit; and, over the years, MaCCRA has heard from several of its chapters that these refunds have been deferred for extended periods, sometimes for multiple years. Needless to say, this kind of delay causes considerable stress and problems for the withdrawing resident or, as is often the case, their estates.

I understand that a legally required time period for the refund of entrance fees could jeopardize the financial integrity of CCRCs if they are forced to refund an entrance fee at a time when the cash flow is limited; and the proponents of this bill certainly do not want that. On the other hand, the existing statute enables operators to unfairly game the system.

New Jersey's continuing care law had a provision regarding the refund of entrance fees similar to Maryland's law; and in 2018 they amended their law to address this problem. They did so by assigning the vacated unit with a refund obligation a sequential number on the date of termination; and, thereafter, a vacated unit with a refund obligation is paid from the proceeds derived from the re-sale of all such units based upon the order of the

sequential refund number assigned to the particular unit. MaCCRA's proposed bill essentially adopts this same system.

Please note that this proposal does not impose a time limit on the refund of entrance fees. It simply proposes a change in the **source** for the refund of an entrance fee from the proceeds of the re-sale of the particular unit to the proceeds of the re-sale of all vacated units with refund obligations. And such refunds are only made "to the extent" of available re-sale proceeds. So no additional financial burden is being imposed on the CCRC.

It is my understanding that the operator of one of the largest CCRCs in Maryland has recognized this problem and has already adopted essentially the same system we propose in their current Residency Agreements; and we would like this refund system made available to the residents of **all** CCRCs.

### **Internal Grievance Procedures.**

The Maryland Continuing Care law requires CCRC providers to establish internal grievance procedures. But, It does not provide for any follow-up and accountability. In the proposed bill, MaCCRA is proposing that the CCRC providers report on the details of their grievance procedure activity to the Department of Aging twice each year and that the Department issue an annual appropriate report on the reported grievance procedure activity during the preceding year. This proposal imposes a minimal reporting burden of the CCRCs and the Department; and I believe it will be beneficial to all in focusing on and addressing those issues that appear to be systemic.

Thank you for reading my testimony. I trust that it has been helpful in confirming your support for this very important bill.