

MaCCRA 2024 Testimony - Support - Senate Bill 76 -

Uploaded by: Bruce Hartung

Position: FAV



Maryland Continuing Care Residents Association
Protecting the Future of Continuing Care Residents
The Voice of Continuing Care Residents at Annapolis

SUBJECT: Senate Bill 76 - Continuing Care Retirement Communities – Governing Bodies, Grievances, and Entrance Fees

COMMITTEES: Senate Finance Committee
The Honorable Pam Beidle, Chair

DATE: Thursday, February 8, 2024

POSITION: **FAVORABLE**

The **Maryland Continuing Care Residents Association (MaCCRA)** is a not-for-profit organization representing the residents in continuing care retirement communities (CCRCs). Maryland has over 18,000 older adults living in CCRCs. The principal purpose of MaCCRA is to protect and enhance the rights and financial security of current and future residents while maintaining the viability of the providers whose interests are frequently the same as their residents. MaCCRA SUPPORTS efforts to enhance transparency, accountability, financial security, and preserve existing protections in law and regulation for current and future CCRC residents statewide.

On behalf of the Maryland Continuing Care Residents Association, we support Senate Bill 76. This bill seeks to modify Maryland’s existing continuing care law in three respects:

FIRST: A principal concern in MaCCRA chapters concerns the lack of resident input in the ultimate management of the CCRCs, particularly regarding budget adoption and the setting of service fees. The existing statute addressing this issue (**Human Services Article, Section 10-408**) provides minimal involvement requiring that at least one resident serve of the CCRC Board, and that the resident member be appointed by the Board after consultation with the Resident Association. This bill modestly expands resident input to hopefully make it more effective.

Specifically, the bill provides for at least two resident members to serve on the CCRC Board who are elected by the Resident Association and who are expressly enabled to report to the Resident Association on the Board’s nonconfidential deliberations, actions, and policies. This bill also requires that the CCRC Board make an appropriate officer of the facility available at least quarterly to review & discuss the current financial statements of the facility with a committee of the Resident Association.

SECOND: The Maryland Continuing Care law requires CCRC providers to establish internal grievance procedures (**Human Services Article, Section 10-428**). But it does not provide for any follow-up and accountability. The bill requires the CCRC providers to report on the details of their grievance procedure activity to the Department of Aging twice each year.

THIRD: The bill will address the timeliness of entrance fee refunds. The existing statute addressing this issue (**Human Services Article, Section 10-449**) provides that for those units having an entrance fee refund obligation, the fee will be refunded upon the re-sale of the vacated unit.

We have heard of CCRCs experiencing financial difficulties who have been deferring the renovation and resale of the less desirable vacated units and not refunding the related entrance fees for extended periods of time. The state of New Jersey addressed this issue by providing for the refund of entrance fees based on a system of assigning a sequential number to each unit becoming vacant on the date of termination and refunding the entrance fee from the proceeds of the resale of all vacated units in numerical order rather than on the resale of the specific vacated unit. The bill adopts this method.

For these reasons we support Senate Bill 76 and ask for a favorable report.

For further information please contact: Bruce Hartung, President
Maryland Continuing Care Residents Association c/o brucehartung@sbcglobal.net

MaCCRA Testimony Jim Fennessey - Support SB76.pdf

Uploaded by: Bruce Hartung

Position: FAV

Date: February 8, 2024

To: The Honorable Pam Beidle, Chair
Senate Finance Committee

From: Jim Fennessey, MaCCRA Secretary

RE: Letter in Support of Senate Bill 76

As with other public service organizations, the directors of a CCRC commit to supporting the purpose and mission as well as the organizational entity. The mission is a top priority. The CCRC mission is to provide a set of benefits to its residents, including fair and equitable treatment ... compared to other classes of CCRC stakeholders.

CCRC residents collectively are major stakeholders. Sadly, residents sometimes are seen mainly as patients or customers. In fact, they are also investors in their CCRC. Obviously, they live there and are impacted deeply as consumers by how the CCRC operates. But residents are also de facto investors and funders through the large entrance fee they pay up front. Those fees function in large part as capital for the CCRC.

Accordingly, residents deserve to be represented appropriately in the governance of their community. They deserve to experience financial risk and reward levels comparable to those of other stakeholders.

As a class, residents should have similar (1) information, (2) influence, (3) risk and (4) reward in comparison with comparable stakeholders in other kinds of organizations. Those are foundation points in the work of the national CCRC residents organization, NaCCRA, for which I have been a volunteer for many years.

This bill moves toward a better balance on each of the 4 dimensions. I hope you will offer a FAVORABLE Report. Thank you.

Kutz Testimony.pdf

Uploaded by: Clarence Lam

Position: FAV

HB-068/SB076 – SUPPORT

Frederick W. Kutz, Ph.D.
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HB068/SB076 – SUPPORT

Continuing Care Retirement Communities - Governing Bodies, Grievances, and Entrance Fees

House Health and Government Operations Committee/Senate Finance Committee
February 1, 2024/February 8, 2024

Dear Chair Pena-Melnyk and Members of the House Health and Government Operations Committee, and Chair Beidle and Members of the Senate Finance Committee:

My name is Frederick W. Kutz. I am testifying today in favor of both HB68 and SB76.

I have been a resident of The Residences at Vantage Point (a CCRC in Columbia, MD) since November 2016. My mother also was a resident here from 2004 to 2010. I currently reside in independent living; however, both my deceased wife and my mother resided in the Comprehensive Care Unit (Cedar Place) for part of their residency here. I have been active in our retirement community through membership in the Vantage Point Residents Association and in both the Maryland Continuing Care Association and the National Continuing Care Association. Although many residents and family members agree with my opinions, this testimony is representative only of my personal perspectives.

I have been a citizen of Maryland since 1970. I hold a bachelor's degree and a master's degree from the University of Delaware and was awarded a Doctor of Philosophy degree from Purdue University in Indiana. My major field is in an area of public health biology. I have served as a Medical Service Officer in the U.S. Army, been employed as a research scientist in corporate and government entities, and a private consultant. I also believe in public service by serving on advisory committees for the Maryland Department of Agriculture and the U.S. Environmental Protection Agency. I have inspected and/or visited a wide variety of public facilities. I hope that my education and background contribute to the welfare of my fellow citizens.

During my association with Vantage Point since 2004, I have observed serious deficiencies in the rights accorded to all residents. In fact, I recommend that members of the committee review the Residency Agreement that we signed upon entry. At our signing appointment I inquired about changes to the agreement only to be told that the management would entertain absolutely no changes even if they were recommended by my attorney. The message was clear: if you wish to live here, sign on the dotted line. The same message was conveyed to us at the other visited retirement communities in our area.

As a resident and as an adult child of a resident, I was elected as President of the Vantage Point Family Council from 2006 to 2009 and in 2019. The Family Council is an organization composed of residents, family members and others interested in the welfare of residents in health care; it is authorized under State regulations. During my last term as President, I was

a member of the Board of Directors of the Columbia Vantage House Corporation. Although I felt that I represented residents and their families who lived in the Health Care Center (Comprehensive Care, Assisted Living and Memory Care Units), in reality according to the Corporate Board Bylaws, I was representing the Corporation. I also was required to sign an agreement that precluded me from divulging any material discussed at Corporate Board meetings. Corporate Board meetings were open only to Board members and management-level employees; observers or visitors were not allowed. Therefore, there was absolutely no means by which residents or their legal representatives could discover the specifics of discussions. Of course, vague minutes were available sometimes, but in-depth information, particularly concerning our fully itemized budget, any conflicts of interest of Board members, contracts, etc. was unavailable. Please note that most funds needed to operate our community are obtained from entrance and monthly fees of residents.

In time (after about 10 months) I found these constraints to be unbearable and wanted my constituents to know what I had discussed at Corporate Board meetings and their reactions to our concerns. None of the divulged information was protected by Federal or State laws or regulations. When the Executive Director of Vantage Point discovered what I was doing, she threatened me with legal action, because I had violated my agreement. Fortunately for me, her threats were empty. Many residents and personal representatives have come up to me and indicated their appreciation for my behavior and service. To this day, I do not regret my actions. As public servants yourselves, I am certain that you can appreciate the dilemma that I faced.

Thank you for reading my testimony. I trust that it has been helpful in confirming your support for these two crucial Bills. I urge you to support all elements of these Bills, but specifically am hoping that you will pass legislation allowing residents to have a more active role in and knowledge of Corporate Board deliberations.

SB76_Written_LAM.pdf

Uploaded by: Clarence Lam

Position: FAV

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Finance Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Senate Chair

Joint Audit and Evaluation Committee

Joint Committee on Fair Practices and
State Personnel Oversight

Chair

Howard County Senate Delegation

Secretary

Asian-American & Pacific-Islander Caucus

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB 76 Continuing Care Retirement Communities - Governing Bodies, Grievances, and Entrance Fees

What SB76 Does:

- Increases the number of residents on the governing boards of CCRCs from one to two
- Mandates that this board meets at least quarterly to discuss financial statements with a designated representative of the resident's association
- Entrance fee refunds must be based on a sequential number issued to each departing resident or their estate, rather than when the resident's specific unit is occupied
- Providers must report information on entrance fee refunds to the Department of Aging every 6 months
- Twice per year, the Department of Aging must collect information from providers about grievances filed at their communities, including the subject of the grievance and the outcome

Why SB 76 is Needed:

- This bill will improve transparency and trust between providers and residents by ensuring that residents will have greater input and understanding of governing board processes
- Residents or their estates will be able to recover their entrance fee in a timelier manner, bringing an end to long waits for refunds based on unit occupancy.

Dan Tracy Testimony Support Senate Bill 76.pdf

Uploaded by: Dan Tracy

Position: FAV

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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.

LRogers - testimony SB0076 - CCRCs – Governing Bod

Uploaded by: Lorraine Rogers

Position: FAV

SUBJECT: SB0076 Continuing Care Retirement Communities - Governing Bodies, Grievances, and Entrance Fees

COMMITTEE: Finance, The Honorable Pamela Beidle, Chair

DATE: Thursday, February 8, 2024

POSITION: FAVORABLE

I am a resident of a Maryland CCRC and am writing in support of SB0076.

CCRC (Continuing Care Retirement Communities) are a complex model of senior living, providing Independent Living, Assisted Living, and often Skilled Nursing on a single campus. In addition to housing, CCRCs provide many services including meals, housekeeping, recreational facilities, and, in Assisted Living and Skilled Nursing, healthcare.

Residents (called "Subscribers" in the Maryland Code) sign contracts and make two kinds of payments.

- The first is an Entrance Fee, often in the hundreds of thousands of dollars, which varies based on factors such as the size of the apartment or cottage, and whether is any provision for a partial refund of the Entrance Fee upon death or termination of the contract. Entrance Fees are commonly used for capital expenditures, although sometimes used for operating expenses.
- The second fee is a monthly fee, generally 4-5 figures, which is used for operating expenses. Monthly fees vary by the size and type of unit, number of occupants (single or couple), type of contract (Type A, B, or C)

CCRCs can be for-profit or non-profit (most Maryland CCRCs are non-profit). They can be stand alone or under common ownership with other CCRCs in Maryland or other states.

Current law requires that governing boards include at least one resident as a full and regular member, chosen in consultation with the Resident Association but selected by the board itself, and that the board make available a summary of the non-confidential portion of the minutes of each meeting within a month of approval of the minutes. However, the statute is silent on some matters—such as whether, when or how executive sessions may be held, how minutes of such sessions are kept, and whether confidentiality agreements may be required.

Some CCRCs are the sizes of small towns in Maryland, with substantial assets under their control. If a village of several hundred people must have its governance carried out in public with public participation, query whether the residents of a CCRC should have similar expectations. Many residents have invested a substantial portion of their assets in paying the Entrance Fee and a substantial portion of their monthly income in paying the monthly fee. While contracts can be terminated, for most residents, moving to a CCRC is intended to be for the rest of their lives. It is very much in their interest that their CCRC be financially stable. It is also very much in the interest of residents to have knowledge and understanding of the administration and governance of their CCRC.

There is increasing concern among many CCRC residents about the limited representation of their perspectives on governing boards and lack of transparency.

For these reasons I support Senate Bill 76 and ask for a favorable report. Thank you.

For further information: Lorrie Rogers, rogers1515@aol.com

Testimony MDOA SB 76 - CCRCs - Governing Bodies, G

Uploaded by: Isabella Shycoff

Position: FWA



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

Date: February 8, 2024

Bill Number: SB 76

Bill Title: Continuing Care Retirement Communities - Governing Bodies, Grievances, and Entrance Fees

Committee: Senate Finance Committee

MDOA Position: FAVORABLE WITH AMENDMENTS

The Department of Aging (MDOA) thanks the Chair and Committee members for the opportunity to testify in support of Senate Bill (SB) 76 - Continuing Care Retirement Communities - Governing Bodies, Grievances, and Entrance Fees.

MDOA is statutorily required to license and regulate continuing care retirement communities (CCRCs) in Maryland pursuant to Title 10, Subtitle 4 of the Human Services Article, Annotated Code of Maryland and the COMAR 32.02.01. As of January 1, 2023, there were 36 CCRC's in Maryland; containing over 12,000 independent living units, 2,000 assisted living units and 2,000 nursing care units. In general, a CCRC consists of the three elements being present:

1. the consumer pays an entrance fee that is at minimum, three times the average monthly fee;
2. the provider furnishes or makes available shelter and/or medical, nursing or other health-related services to people 60 or older; and
3. the shelter and services are offered under a contract that lasts more than a year, usually for life.

Maryland's CCRC law is fairly strict compared to other states, and primarily focused on the financial health of the organizations. CCRCs must request approval to build a new campus, expand, renovate, sell or close, and must provide very detailed information when they make any of these requests. Additionally their financial, organizational, legal and marketing information is reviewed annually through a rigorous MDOA licensing process.



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

In MDOA's view, some of the issues that have led to this legislation are the result of the pandemic, which stressed CCRC finances in multiple ways: no new residents moved in for a sustained period; staff quit; staffing expenses soared, rates have gone up. The pandemic caused occupancy to decline and weakened financial positions. The ability to reimburse entrance fees on a timely basis was delayed in some situations that MDOA is aware of. The good news is that these trends have reversed and CCRC occupancy is improving and financials are stronger.

MDOA is supportive of provisions in SB 76 that aim to improve relations & communications between residents and management at CCRCs and increase transparency for residents. To that end, MDOA supports amended language to require CCRC's to post their disclosure statements on their own websites as a condition to receiving an MDOA license. Although this is public information, and technically available to residents and consumers, it is not currently accessible online.

SB 76 would mandate new internal grievance and refund reporting by CCRC's although we believe that this information does not enhance MDOA's current regulatory oversight function. MDOA can absorb the new reporting requirements from a staff capacity perspective. MDOA requests clarifying language that directs these reports be made once annually to MDOA and that MDOA's annual report of this data be directed to the Maryland General Assembly, with protections against revealing personal information, including where there are low numbers of grievances and refunds in a particular year in a single community.

However, MDOA is concerned that the sequential refund structure in SB 76 will not help expedite the refund process for existing CCRC residents and may cause more harm than good. Most CCRC financing is predicated on assumptions that involve the entrance fee refund process; that refunds are not made to residents or their families or estates until individual units are re-occupied by new residents. MDOA has real concern that this could be destabilizing, cutting against to MDOA's current statutory interest in overseeing a fiscally strong CCRC community. MDOA notes this change could put CCRCs at an additional competitive disadvantage with other kinds of providers, such as high end assisted living communities.



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

With respect to increasing resident representation on boards, MDOA is concerned it will not necessarily improve transparency or resident relations, as board members must pledge confidentiality and loyalty to the organization. SB 76 would require that the resident representative be elected by a CCRC's resident association. However, this overlooks that in some cases there are multiple resident groups, or more than one resident association at a CCRC.

For these reasons, the Department of Aging respectfully urges a favorable with amendments report for SB 76. If you have any questions, please contact Andrea Nunez, Legislative Director, at andrea.nunez@maryland.gov or (443) 414-8183.

Sincerely,

Isabella Shycoff
Director, Division of Housing Services
Maryland Department of Aging

LeadingAge Maryland - 2024 - SB 76 - CCRCs.pdf

Uploaded by: Aaron Greenfield

Position: UNF

TO: Finance Committee
FROM: LeadingAge Maryland
SUBJECT: Senate Bill 76, Continuing Care Retirement Communities - Governing Bodies, Grievances, and Entrance Fees
DATE: February 8, 2024
POSITION: Unfavorable

LeadingAge Maryland opposes Senate Bill 76, Continuing Care Retirement Communities - Governing Bodies, Grievances, and Entrance Fees.

LeadingAge Maryland is a community of more than 140 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. Members of LeadingAge Maryland provide health care, housing, and services to more than 20,000 older persons each year. Our mission is to be the trusted voice for aging in Maryland, and our vision is that Maryland is a state where older adults have access to the services they need, when they need them, in the place they call home. We partner with consumers, caregivers, researchers, public agencies, faith communities and others who care about aging in Maryland. LeadingAge Maryland represents the vast majority of CCRCs in the state.

Senate Bill 76 seeks to increase resident representation on governance boards, require the Department of Aging to collect data on internal grievances filed in continuing care retirement communities (CCRCs), and mandate a sequence for the return of deposits. From an effective governance and financial sustainability perspective, LeadingAge Maryland sees no clear purposes for any of the changes that this bill seeks to make, and in fact many of the changes would be problematic. For these reasons, LeadingAge Maryland respectfully requests an unfavorable report on Senate Bill 76.

Sequence for the return of deposits

CCRCs operate through a highly complex financial framework that is driven by the carefully-structured receipt and refund of entrance fees. The proposed processes for issuing entrance fee refunds in Senate Bill 76 are confusing, would place an undue financial burden on CCRCs and may threaten the financial investment of existing CCRC residents. Specifically, sequencing the entrance fee refunds as proposed, rather than allowing the CCRC to follow the receipt-and-refund structure as contractually agreed-to by the CCRC resident, could potentially create significant cash flow disruptions that would impact the CCRC's ability to manage and address its many other financial, contractual, and operational obligations. Current residents of the CCRC could ultimately face shortages, service delays, quality irregularities, or other disruptions as a result. Put plainly, the proposed sequencing of refunds in Senate Bill 76 demonstrates a clear unfamiliarity, ignorance, or else indifference to how the current structuring of entrance fee receipts and refunds in fact protects the CCRC residents' collective financial investments, while ensuring the current and future financial stability and growth of the CCRC.

There is no body of evidence that proves CCRCs in Maryland are not returning their entrance fee refunds per contractual terms. Senate Bill 76 is proposing to fix a problem that does not exist, and in the

meantime, it will create unnecessary cash flow disruptions for CCRCs that will impact the organizations' ability effectively manage their financial viability.

When an individual moves into a CCRC, they sign a contract that clearly defines the terms of the agreement, including when and how a refund of the entrance fee will be provided. All residents of CCRCs have agreed to the terms which were outlined in the contract they signed upon moving to the community. These contracts and terms are reviewed and approved by the Maryland Department of Aging and require a great deal of research and actuarial analysis on the part of the CCRC.

The changes proposed in SB 76 would require that CCRCs adopt a "first in first out" sequential order in processing entrance fee refunds, regardless of the financial implications on the CCRC. Though there are some contractual variations, most entrance fee refunds are issued when the resident's unit has been re-occupied. SB 76 would change this approach, and instead require CCRCs to pool funds from sales of units and issue a sequential number to each resident or family awaiting a refund. This approach does not consider the potential large losses the CCRC would be forced to absorb. For example, if, under this proposed sequencing structure, the 'next in line' resident refund is \$800,000, but the 'next-incoming' entrance fee receipt is only \$400,000, the CCRC would struggle to absorb that additional \$400,000 outlay until another new entrance fee is received. However, in the meantime, of course, there would be another 'next in line' refund due to be paid. The cash outlays would continue to escalate until the CCRC had managed to receive enough incoming entrance fees to offset these accumulated refund outlays. This practice would draw cash and cash reserves away from operations and the repayment of debt obligations, at a minimum. Additionally, this pooling approach would make it difficult for residents and heirs to estates to understand when their refund would be paid. The current practice, wherein a refund is issued to the "outgoing resident/ estate" once the new, "incoming" resident entrance fee is paid, is not only far simpler to manage, but provides for even and strategic cash flow that allows the CCRC to run its operations smoothly.

We understand from the proponents of this bill that they are concerned about the residents, and more likely the heirs, who have had to wait beyond a year to receive a refund. Though there have been few isolated incidents where residents or their heirs have had to wait up to two years to receive a refund, this is not representative of the timeframe in which most entrance fee refunds are issued by Maryland CCRCs. These CCRCs have fulfilled the terms of the contract that the resident agreed to upon signing the contract, so there is no contractual violation or exception that has occurred.

A review of other states' CCRC statutes reveals that Maryland's current statute is well within the norm; the majority (80%) of states that regulate CCRCs do not specify any timetable for the refund of entrance fees. In fact, of those 15 states that do have any statutory language around the refund of entrance fees, the eight (8) states that do have a timetable for a refund predicate that refund on the receipt of a new entrance fee for the same vacated residence.

Resident representation on boards

We agree that resident involvement is important and provides important information and insight to CCRC management and governing boards. Maryland already exceeds most other states in resident representation on CCRC boards. There are only 3 states nationally who require voting resident members on boards. There is no justification or proof that additional voting members add value or efficacy to board

governance. Membership of a governing board requires specific insight, expertise, professional experience, and acumen that the virtue of being a resident of CCRC does not, alone, confer. It is essential that the CCRC governing board retain the sovereignty of setting the standards by which its own organization will be governed and led.

CCRC residents have a direct financial interest in the communities where they reside. Often, CCRC residents have made significant financial investment to move into a CCRC. Board members have a fiduciary responsibility to the organization, not just to any one individual resident or group of residents. There is a clear conflict of interest for residents who serve on CCRC boards that should not be overlooked. Though we support open communication between boards and residents, and appropriate resident representation on CCRC boards, the proposed changes in Senate Bill 76 would limit the ability of CCRCs to operate their boards effectively and in line with governance best practices.

There are no other industries where private businesses are required by the state to have consumers serve on their board of directors. Senate Bill 76 would require CCRCs to increase from one to two the number of full voting members of their boards who are residents of the CCRC. Only seven states require CCRC resident representation on boards, and of those, only three require that one (1) resident board member have full voting rights. Notably, Maryland is already one of these three states. Many boards are between 9-16 members; requiring that two full voting board members be CCRC residents will limit the organizations' ability to practice effective governance and recruit board members with the skill sets and abilities necessary for the continued success of their organizations. Furthermore, though we support that residents of a CCRC make recommendations as to which residents be considered to serve on the board, the current board of directors must have authority to vote to elect board members.

Senate Bill 76 would also require that multi-site organizations have on their corporate level board one resident from every one of their individual communities. Maryland already requires that corporate level boards include one full voting resident board member for every three communities in the state. Requiring one resident board member for every community in the state would over-represent the resident on CCRC parent boards, and would again limit the organization's ability to operate an effective board of directors, as resident board members could easily become the majority.

Reporting of grievances

Senate Bill 76 would require CCRCs to report twice a year all internal grievances filed by residents of the CCRC. There is no clear precedent or purpose for having the regulatory body of CCRCs collect information on internal grievances. In other states, such as New Jersey, Oregon, and Florida, regulatory bodies can mediate conflicts between individuals and their CCRC, but there is no history in any state of individual CCRCs reporting all received grievances to the regulatory body. This new requirement would be problematic and unnecessary for several reasons:

- This requirement adds new administrative burden to both providers and to the Department of Aging.
- CCRCs are already required to have an internal grievance procedure, and residents are welcome to and do raise concerns and complaints of varying nature. This includes a wide range of issues spanning from complaints about the consistency of the vegetables served at dinner to financial

concerns. We see no clear purpose for the Department of Aging to collect information about internal grievances that are already addressed and resolved through the required internal processes and procedures.

- The bill lacks any level of clarity around what would be considered a “grievance”.
- There is no clear purpose for reporting this information, and to what end the information would be used or shared.

For these reasons, LeadingAge Maryland respectfully requests an unfavorable report for Senate Bill 76.

SB0076_UNF_LifeSpan_CCRCs - Governing Bodies, Grie

Uploaded by: Danna Kauffman

Position: UNF



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

TO: The Honorable Pamela Beidle, Chair
Members, Senate Finance Committee
The Honorable Clarence K. Lam

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer
Christine K. Krone

DATE: February 8, 2024

RE: **OPPOSE** – Senate Bill 76 – *Continuing Care Retirement Communities – Governing Bodies, Grievances, and Entrance Fees*

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 (CCRCs), medical adult day care centers, senior housing communities, and other home and community-based services, we **respectfully oppose** Senate Bill 76. This bill makes changes to the composition of a governing board of a CCRC, alters the process for the return of entrance fee deposits, and requires biannual reporting to the Maryland Department of Aging regarding internal grievances and entrance fee refunds.

Maryland law mandates that CCRCs provide certain information to prospective residents at least two weeks before signing an agreement, including information that is the subject of Senate Bill 76. Except for specific situations, the return of entrance fee deposits is a contractual agreement governed by the resident contract. To ensure that prospective residents are well-aware of the policies governing entrance fee refunds, the General Assembly passed legislation in 2012 that added several disclosure requirements.

Section 10-430 of the Human Services Article requires:

All marketing materials, including disclosure statements, that state that part or all of the entrance fee is or may be refundable shall include a conspicuous disclaimer that states at least the following: “Carefully read the continuing care agreement for the conditions that must be satisfied before the provider is required to pay the entrance fee refund.”

The continuing care agreement also is required to provide “in clear and understandable language, in boldtype, and in the largest type in the body agreement: (i) the terms governing the refund of any portion of the entrance fee if the provider discharges the subscriber or the subscriber cancels the agreement.” In addition, the agreement must “state that the subscriber acknowledges

reviewing all of the terms of the entrance fee refund clauses and provisions contained in the continuing care agreement.” See *Section 10-444 of Human Services Article*.

LifeSpan supported each of these provisions. The General Assembly has taken very specific steps to ensure that prospective residents are clearly informed of the policies governing entrance fee refunds as outlined above. We strongly believe that each CCRC shall continue to maintain the flexibility to structure entrance fee refunds to ensure the financial well-being of each community. Therefore, we respectfully request an unfavorable vote.

For more information call:

Danna L. Kauffman
Pamela Metz Kasemeyer
Christine K. Krone
410-244-7000

HFAM Testimony SB 76.pdf

Uploaded by: Joseph DeMattos

Position: UNF



**TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE**

February 8, 2024

Senate Bill 76: Continuing Care Retirement Communities - Governing Bodies, Grievances, and Entrance Fees
Written Testimony Only

POSITION: UNFAVORABLE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to submit this testimony regarding Senate Bill 76. HFAM represents skilled nursing centers and assisted living communities in Maryland, as well as 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 76 alters the membership of governing bodies of continuing care retirement communities by increasing the number of subscribers; alters the number of times select committees of providers without a governing body are required to meet with subscribers each year; requires the Department of Aging to collect certain information about internal grievances; alters the processes for the termination of a continuing care agreement; and alters the process for refunding certain entrance fees.

We agree that it is useful to place more attention on transparency and communication that empowers consumers, residents, patients, and their families to be active and informed consumers of healthcare. We appreciate this legislation's attempt to enhance transparency, protect residents, and increase representation on governance boards. However, many of the changes this bill proposes do not serve a clear purpose and would be problematic. Below are our comments on the three main components of this legislation.

1. **Sequence for the Return of Deposits.** When an individual moves into a CCRC, they sign a contract that defines the terms of the agreement, including how and when a refund of the entrance fee will be provided. These contracts are reviewed and approved by the Maryland Department of Aging. The proposed process for issuing entrance fee refunds in this legislation would place an undue financial burden on CCRCs and may even create cashflow issues that threaten investments and services benefiting existing residents.
2. **Resident Representation on Boards.** Resident involvement is incredibly important for CCRCs and Maryland already exceeds most other states in resident representation on CCRC boards. Maryland is one of three states that require one resident board member to have full voting rights. There is no data-driven evidence that additional voting members add value or efficacy to governance. Again, resident involvement and open communication between the board and residents are to be applauded. However, the changes proposed in SB 76 would limit the ability of CCRCs to operate their boards effectively and in line with best governance practices.

3. **Reporting of Grievances.** Senate Bill 76 requires all CCRCs to report twice per year all internal grievances filed by residents. While regulatory bodies in other states can mediate conflicts between residents and their CCRC, there is no precedent for the regulatory body to collect all grievances received. This requirement would add an administrative burden to both the CCRC and the Department of Aging. In addition, CCRCs already have internal grievance procedures and there doesn't appear to be a purpose for the Department of Aging collecting information about grievances that have already been resolved. Nor does this legislation outline to what end this information would be used or shared.

For these reasons, we respectfully request an unfavorable report from the Committee on Senate Bill 76.

Submitted by:

Joseph DeMattos, Jr.
President and CEO
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