

**HB-1177 – SUPPORT**

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**Continuing Care Retirement Communities – Subscriber Rights and Provider Duties**

House Health and Government Operations Committee

March 7, 2024

Dear Chair Pena-Melnyk and Members of the House Health and Government Operations Committee:

My name is Frederick W. Kutz. I am testifying today in favor of HB1177.

I have been a resident of The Residences at Vantage Point (RVP – 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 experience and 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 academic field is in an area of public health biology. I have served as a Medical Service Officer in the U.S. Army and been employed as a research scientist and educator in corporate and government entities and universities, and as 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. After carefully reading the Residency Agreement and having my attorneys review it, my non-legal opinion is that we have limited individual rights, particularly in the areas of transparency and grievance policies. One comment made by my attorneys was that the Corporate Board without our immediate knowledge could charge us any monthly fee that they approved.

I along with others have discussed these deficiencies with residents here at RVP and at other CCRC facilities in MD. Most residents here and at other facilities have observed these

problems and are supportive of this legislation. For one reason or another, a few residents are reluctant to express their opinions to management or governmental authorities. Two major reasons for their hesitation are (1) that they fear retaliation from management, and (2) that they have medical issues that pre-occupy their attention. As a matter of fact, a recent survey conducted by the University of Chicago found that over 50 percent of the residents entering CCRCs in the past few years have evidence of medical or behavioral issues. As supporters of this legislation, many of us hope that some of these legislative elements may alleviate at least a part of these concerns. We must enact legislation that provides some degree of assurance to us – the elderly in our communities.

Many of the elements contained in this Bill come directly from an effort undertaken by the National Continuing Care Retirement Association (NaCCRA) starting in 2015. Their model Bill of Rights grew out of a consultative process lasting over a year and involving residents from approximately 50 continuing care retirement communities. It was discussed at the annual membership meeting of NaCCRA in April of 2015, and approved by the NaCCRA Board at its May 6, 2015, meeting. It is intended to serve as a model of best practice for residents and providers, and as a convenient resource for citizens and legislators as they guide the evolution of regulations and laws pertaining to CCRCs. Based on a precursory search of the Internet, the following States have adopted portions of this model: CA, CT, FL, OR, VA and WA.

At our signing appointment in 2016, 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. The practice of closed meetings continues to this day, despite frequent objections from residents. 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 the reactions of the Corporate Board 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.

Here at the RVP the lack of transparency of Corporate Board deliberations and activities mean that residents and/or their legal representatives are unable to:

- Have a copy of the Bylaws that govern the operation of the Board and ascertain whether the operations are consistent with them;
- Attend any Corporate Board meetings;
- Establish how Corporate Board members voted on particular issues;
- Determine whether any Corporate Board members have actual or apparent conflicts of interest, if there is a conflicts article in the Bylaws;
- Find out whether all Board members are in compliance with the term limit policy and other elements, if the Bylaws contain these provisions;
- Discover how Corporate Board members or members of Corporate Board Committees are appointed or selected;
- Ascertain details about what contractual or other fiduciary agreements have been approved (Although RVP is a non-profit corporation, our management is provided by a for-profit company: Life Care Services who owns or manages over 140 facilities); and
- Learn whether fiduciary agreements are awarded through competitive or non-competitive means and how they are publicly advertised, if so.

I strongly favor the establishment of an ombudsman to oversee an externally moderated grievance procedure for CCRA residents of independent living. At present at RVP, residents in independent living only have a limited internal grievance process. I have had experiences with this internal system only to be disappointed in the outcome. All my complaints (both written and in person) were without response (either from the Executive Director or Corporate Board members). The Maryland Secretary of Aging should be tasked with designating an ombudsman for each county to monitor the State-moderated grievance process. The Secretary should promulgate regulations providing direction and regulatory authority to the ombudsman. Residents, their family members and/or legal representatives should have the right to contact their county ombudsman with complaints, compliments, and/or comments without prejudice or recrimination. Records of these contacts made under the ombudsman program should be a matter of public record and available on request.

Thank you for reading my testimony. I trust that it has been helpful in confirming your support for this crucial Bill and two other Bills are under consideration in this session of the General Assembly: HB76 and SB68 (Continuing Care Retirement Communities – Governing Bodies, Grievances, and Entrance Fees). I urge you to support all elements of these Bills, but specifically am hoping that you will pass legislation allowing elderly residents to have more active control and knowledge over our lives!