



TO: House Health and Government Operations

FROM: LeadingAge Maryland and LifeSpan Network

SUBJECT: House Bill 1177 – Continuing Care Retirement Communities – Subscriber Rights and Provider Duties

DATE: March 7, 2024

POSITION: Opposed

LeadingAge Maryland and LifeSpan Network respectfully oppose House Bill 1177, Continuing Care Retirement Communities - Subscriber Rights and Provider Duties.

Together LeadingAge Maryland and LifeSpan Network represent more than 140 not-for-profit aging services organizations as well as for-profit communities serving residents and clients through continuing care retirement communities, affordable senior housing, assisted living, nursing homes and home- and community-based services. Our missions are 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. Many of our members belong to both associations.

LeadingAge Maryland and LifeSpan have great concern about many of the changes House Bill 1177 seeks to make to the operations of continuing care retirement communities (CCRCs). The bill language does not take into account existing CCRC regulations, and many of the provisions in HB 1177 are duplicative of current regulations or will have fiscal implications for both the CCRCs and/or the State. Often times, duplicacy leads to confusion, which can result in implementation issues.

Bold language below outlines requirements in House Bill 1177 followed by our concerns:

1. **Pre-CCRC Agreement**

Provider must provide a written list in plain language the services at the facility and covered by the contract. CCRC residents are already provided, as required by the Maryland Department of Aging regulations, prior to moving to the CCRC, a residency agreement that outlines all services at the facility that are covered by the contract and other services that are not guaranteed but may be available to the resident.

2. **CCRC Living**

Subscriber and select individual unit and furnish. This is already standard practice and the foundation of consumer choice which is inherent to living in a CCRC. Individuals moving into CCRCs choose which unit they would like to move into and furnish the unit according to their preferences. Some communities will provide information on furnishing that may pose a risk to the

resident (eg, fall risk), and residents may not be allowed to bring in items that would pose a fire or safety risk to themselves or others living in the community, but residents are free to decorate and furnish their chosen unit according to their preferences.

Subscriber can refuse medication and treatment. Residents of CCRCs can refuse medication or treatment. These rights are protected under state and federal laws, including regulations governing healthcare facilities and patient rights. This includes laws related to informed consent that provide patients with the right to receive information about the risks, benefits, and alternatives to proposed treatments or medications before deciding. Informed consent is a fundamental aspect of patient autonomy and is obtained for all medical interventions, except in emergencies or situations where the patient lacks decision-making capacity.

Participate in conversations about higher level of treatment like assisted living. Residents (and their power of attorney, as applicable) are already involved in all conversations relating to care and services which may require the individual to move to another level of care.

3. Provider Responsibilities

Provider must deliver complete and prompt fulfillment of the services and terms set in a continuing care agreement and any other contract made with a subscriber. Complete and prompt are subjective. The determination would need to be agreed upon between the subscriber (resident) and the provider. CCRCs already discuss expectations with the resident and work to implement services outlined in the agreement. CCRCs have detailed grievance process that residents can utilize if they feel that concerns related to the provision of services are not being addressed fully by management.

Provide a copy of a continuing care agreement or contract signed by a subscriber to the subscriber upon request by subscriber or a subscriber's designated representative. This is already in place.

Regularly inform a subscriber's family members, as chosen by the subscriber, about the subscriber's condition and care plan; This is already in place and for those in skilled nursing or assisted living is required by both Maryland and federal law. Due to patient privacy laws, management must have consent from the resident before they can involve the resident's family member in their care.

Once per year, disclose to a subscriber the finances of an entity that owns or has a stake in a continuing care retirement community or facility that a subscriber is part of. CCRCs are already required to share their annual disclosure statement with all residents. It is important to note that because Maryland does not provide for obligated groups, each community stands financially on its own.

Upon request, provide a report written by a certified actuary affirming that a provider has sufficient funds to provide for the future of the continuing care retirement community. The Maryland Department of Aging reviews annually every CCRCs financial position. Actuarial reports contain proprietary and private information that cannot be shared as they contain identifiable information about individuals who live in the community. The annual audited financial statements that are already shared as part of the annual disclosure statement are prepared by

external auditors and demonstrate the organization's financial solvency. Current law requires significant information to be included in the annual disclosure statement.

Before a continuing care retirement community or facility may be sold, inform a subscriber of a sale of a continuing care retirement community or facility. This is already required and specified in state law. It is unclear what the proponents are seeking to change.

At least one month before changing a fee charged to a subscriber, notify the subscriber of the plan to change the fee. It is unclear what "fee" this bill is referring to. If it refers to the monthly fees paid by subscribers, current Maryland regulations require 45-day notice, as do most other states. Increasing this timeframe to 90 days would be highly inefficient and burdensome. By way of example, nursing homes are required to provide 60 days' notice when changing a fee. The current regulations provide residents with 45 days' notice before their monthly fee increases, which provides ample notice and is in line with what other states across the country require.

Provide an opportunity for a subscriber to provide feedback on the planned change to a fee.

Respond in writing to feedback from a subscriber regarding a planned change to a fee. This is a broad overreach. CCRC residents signed a contract for services, not a contract that gave them interest in the governance of the community. Most CCRCs are not-for-profit organizations who provide services and care even if a resident runs out of financial resources. Increases in monthly fees are carefully analyzed and considered to ensure the financial viability of the organization and their ability to meet their obligations to care for individuals for the remainder of their lives.

Before implementing a change to the delivery of health care services, food services, and facilities maintenance, including staffing levels or staff credentialing, notify a subscriber of the planned change.

Provide an opportunity for a subscriber to provide feedback on the planned change to the delivery of services. CCRCs already provide ample opportunities for residents to provide feedback on a variety of issues throughout the community, including at the monthly resident association meetings and the various committees that residents manage.

Before implementing a change to the delivery of health care services, food services, and facilities maintenance, including staffing levels or staff credentialing, notify a subscriber of the planned change. This level of notification and requirement of responding in writing for every change a CCRC may make is not found in any other state's statutes. Requiring that all residents be notified of all operational or staff changes is a broad overreach that would negatively impact on the organization's ability to operate effectively. Services that are to be delivered are outlined in the residency agreement that is signed by all residents prior to moving to the community. Services will vary based on clinical needs of the resident population and many other operational factors. CCRC's already have active resident committees that participate in discussions and input on decision making related to a wide range of services, such as culinary, building and grounds, resident services, and health services.

Conduct a survey annually to evaluate subscribers' satisfaction with the fulfillment of the services and terms set in a continuing agreement and other contracts made with subscribers. There is no body of evidence that would suggest that CCRC's in Maryland are not providing services as outlined in the legally binding residency agreements signed by residents, or that CCRC's are not fulfilling the contract that a resident signed upon moving to the community.

If the goal of this proposed change is to hold a CCRC accountable for not fulfilling its contractual obligations to an individual, an annual, collective resident satisfaction survey is not the remedy. Not only would this delay a specific individual's resolution to contractual violations by the CCRC, but it presupposes that this individual is not able or capable of seeking their own legal remedies – which, quite to the contrary, they are.

Most CCRCs engage in resident satisfaction surveys semi-annually as a best practice, and typically ahead of or following a major project such as construction or renovations.

Every 6 months, provide to a subscriber a report on the significant issues affecting the continuing care retirement community that affect subscribers' well-being or financial investment in a continuing care agreement, including issues that have been address by subscribers or a residents association since the immediately preceding report was provided; Many CCRCs hold monthly or quarterly town halls where they discuss a wide variety of topics related to community life, services, changes, financials, etc. However, there is no precedent for requiring a CCRC to create this type of report. The notion of well-being is highly subjective, as is that of what "affects well-being". There is no other state in the country that has in statute the requirement for this type of report.

If an entity owns or has a stake in multiple continuing care retirement communities or facilities, once per year, disclose to a subscriber the finances of the entity to a subscriber in each continuing care retirement community or facility the entity owns or has a stake in; This requirement does not exist in any other state statute for CCRCs. The finances of one CCRC in Maryland have no bearing on the finances of a sister community either in or outside of the state. Maryland statute already requires a disclosure statement be submitted annually to the Maryland Department of Aging, as well as being made available to the CCRC's own residents. It is the Department of Aging's role to receive and review the disclosure statements of all CCRCs in the state. This bill seems to suggest that instead, residents be responsible for monitoring and reviewing CCRC's disclosure statements rather than the Department of Aging.

4. **Establish an Independent Living Ombudsman Program**

Independent living refers to the ability of an individual, typically an adult, to live autonomously and manage their own affairs without significant assistance from others. It often implies the ability to carry out daily tasks such as cooking, cleaning, managing finances, and maintaining activities of daily living without relying on others for support. Independent living can also encompass the freedom to make decisions about one's life, including where to live, work, and socialize, without undue influence or control from others. An independent living community for older Marylanders may exist as a stand-alone entity or as part of a continuing care retirement community (CCRC) or life plan community. Also, independent living can include affordable housing as a Section 202 program in conjunction with the Section 8 Housing Assistance Payments Program under the U.S. Department of Housing and Urban Development (HUD).

Our primary concern with this provision is the need for regulation that is a prerequisite for the establishment of an Ombudsman office and the impact it would have by eliminating the residents' ability to live independently.

No other state in the nation has an Ombudsman program for independent living. By its very definition, an Ombudsman program is for individuals not capable of advocating for themselves. Framing this as an "Ombudsman Program" is a misuse and demonstrates misunderstanding of the original intent and purpose of such programs as established by the Older Americans Act. As defined by the National Long Term Care Ombudsman Resource Center, [Ombudsman Programs](#) are established for the support and advocacy of residents of nursing homes, assisted living residences, and other long-term care residences. Independent Living residents are not, by common definition, living in a long-term care setting, and, it is presumed, possess the capacity to advocate for their own needs and grievances. Put another way, if an individual is 'independent' enough to reside in "independent living," they are able to attend to their own independent activities of daily living (IADLs,) including but not limited to self-promotion and self-sustainability.

An Ombudsman office without any level of regulation would be reduced to a mere complaint unit without any definitive guidelines or resolutions and would not meet the objective of the proposed legislation. Therefore, the regulation needed to achieve the goal of an Ombudsman office would bring forth unintended consequences of eliminating the "independence" of residents that reside in an independent living setting.

5. **Board**

Representation on the board increased from 1-3. If a provider has a governing body, at least three of the provider's subscribers shall be full and regular members of the governing body. 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. Board sizes range widely, and residents have an inherent conflict of interest. A board should take resident insight and feedback, that is accomplished by the current one resident representative structure. Populating a small 6-7 person board with 3 residents would hinder the organizations ability to plan for the future long-term health of the organization since residents are naturally concerned with the short-term nature of planning.

Board must include a member elected by the resident association. This practice would go directly against not-for-profit governance best practices and is not done in any other state. A board of directors must retain authority to vet and elect its members. CCRCs already work with their resident associations to identify and nominate potential resident board members. The final decision to elect board members must remain with the board of directors themselves.

Subscribers can report on nonconfidential information; If discussing individual or personnel information, provider can designate meeting to be confidential.

Most information discussed during a board meeting is confidential. Board meetings are by definition confidential. Providers already have processes in place to share non-confidential information that may result from board decisions and meetings, including summaries of board meeting minutes. It is important to note that some resident board members report feeling pressured

by other residents at the community to share proprietary and confidential information about board conversations and deliberations. This has prompted providers to ensure non confidential information is available in public places (for example, the library) and communicated regularly to residents by management (such as at town halls and resident association meetings) so that the resident board member does not feel they are responsible for relaying all information to the residents in the community.

For these reasons, LeadingAge Maryland and LifeSpan respectfully request an unfavorable report for House Bill 1177.

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