

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 1379 (Quirk) – As Amended April 22, 2019

SUBJECT: Continuing care contracts

SUMMARY: Renames the Continuing Care Provider Fee Fund to the CCRC [Continuing Care Retirement Community] Oversight Fund, adopts changes to ensure that the balance in the fund is adequate to fund reasonable regulatory costs related to CCRCs, and revises provisions of current law regarding the California Department of Social Services' (CDSS') authority to require a CCRC provider to submit a financial plan in response to the department's identification of problems and deficiencies in need of remediation. Specifically, **this bill:**

- 1) Changes the name of the Continuing Care Provider Fee Fund to the CCRC Oversight Fund and revises provisions of current law related to the fund as follows:
 - a) Deletes language requiring CDSS to adjust the calculations for application fees and annual fees, as specified, to reduce the amounts collected if the balance in the fund is projected to exceed \$500,000 for the next budget year;
 - b) Requires, instead, that CDSS adjust the calculations for application fees and annual fees as needed to ensure that the balance in the CCRC Oversight Fund is adequate to fund the reasonable regulatory costs of the program, and requires CDSS, if the balance in the fund exceeds an amount adequate to cover those costs for the year, to adjust the calculations for the application fees and annual fees to reduce the amounts collected, as specified; and,
 - c) Requires the approved budget for the Continuing Care Contracts Section to be posted on CDSS's internet website.
- 2) Revises provisions of current law regarding CDSS's authority to require a CCRC provider to submit a financial plan as follows:
 - a) Authorizes CDSS to request quarterly financial reports along with financial plans;
 - b) Adds to the list of reasons for which CDSS may request a financial plan and quarterly financial reports situations in which any two of the following occur:
 - i) Total occupancy falls below 85%;
 - ii) For a provider with mortgage financing from a third-party lender or public bond issue, the coverage ratio of the provider's debt service is less than 1:1 and the provider has less than 90 days' cash on hand in the reserve account, as specified; or,

- iii) For a provider without mortgage financing from a third-party lender or public bond issue, the provider has less than 90 days' cash on hand in the reserve account, as specified;
 - c) Requires a provider to notify CDSS on a quarterly basis if two of the above listed circumstances occur;
 - d) Stipulates that, when a provider is required to submit its financial plan to CDSS, it must submit quarterly updates to that plan from the date the financial plan is approved through the date it expires, explaining the provider's progress toward remedying the problems and deficiencies identified by CDSS;
 - e) Requires a provider, upon approval of its plan, to distribute a copy of the plan to the facility's resident council and, further, requires a provider to distribute all quarterly reports to the facility's resident council immediately following submission to CDSS;
 - f) Requires a provider's corrective action plan or plan for reorganization, as specified, to be shared with the facility's resident council within a reasonable period of time;
 - g) Requires a provider to share its approved financial plan and its most recent quarterly report with a prospective or incoming resident if that person will likely become a resident within 60 days and before the remediation of the problems and deficiencies identified by the CDSS; and,
 - h) Authorizes CDSS to initiate delinquency proceedings, as specified, if a provider fails to correct deficiencies by the expiration date of the financial plan.
- 3) Makes technical and clarifying changes.

EXISTING LAW:

- 1) Establishes the "California Residential Care Facilities for the Elderly Act" to provide for the licensure and regulation of Residential Care Facilities for the Elderly (RCFEs) as a separate category within the existing licensing structure of the Department of Social Services (DSS). (Health and Safety Code [HSC] Section 1569 *et seq.*)
- 2) Defines "residential care facility for the elderly" to mean a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. (HSC 1569.2 (p)(1))
- 3) Provides for the licensure and regulation of Skilled Nursing Facilities (SNFs) by the Department of Public Health, which operate as health facilities that provide skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. (HSC 1250 *et seq.*)

- 4) Defines a “continuing care contract” to mean a contract that includes a promise by a provider to provide one or more elements of care to an elderly resident, as specified, in exchange for an entrance fee and/or the payment of periodic charges. (HSC 1771(c)(8) and (9))
- 5) Defines a “continuing care retirement community” to mean a facility located in the state where services promised in a continuing care contract are provided. Further, allows that, when services are provided in residents’ own homes, the homes into which the provider takes those services are to be considered a part of the CCRC. (HSC 1771(c)(10))
- 6) Provides for the certification and regulation of CCRCs by CDSS. (HSC 1770 *et seq.*)
- 7) Requires an applicant for a certificate of authority to operate a CCRC to obtain appropriate licenses for the entire CCRC as otherwise required by law, including RCFE and/or SNF licenses. (HSC 1771.5)
- 8) Requires a continuing care contract to contain numerous specified elements including, but not limited to, the duration of the contract, the list of services that will be made available to the resident as required to provide the appropriate level of care, an itemization of the services included in the monthly fee and services available for an extra charge, and others. (HSC 1788)
- 9) Establishes requirements regarding the cancellation of a continuing care contract. (HSC 1788.2)
- 10) Prohibits a lump-sum payment after termination of a repayable contract, as specified, from being considered, characterized, or advertised as a refund and, further, requires the full lump sum owed, including any interest accrued, to be paid to the resident or the resident’s estate within 14 calendar days after resale of the unit. (HSC 1788.4(e))
- 11) Establishes within the State Treasury the Continuing Care Provider Fee Fund to consist of fees received by CDSS and to be continuously appropriated to CDSS for funding of program personnel salary costs, contracts with technically qualified person, and other program costs or costs directly supporting program staff, as specified. Requires CDSS to adjust the calculations for application fees and annual fees to reduce the amounts collected if the balance of the fund is projected to exceed \$500,000 for the coming budget year. (HSC 1778)
- 12) Requires an entity filing a CCRC application for a permit to pay an application fee, and requires an annual fee to be required of each CCRC provider who has obtained a provisional or final certificate of authority. (HSC 1779.2, 1791)
- 13) Authorizes CDSS to require a CCRC provider to submit a financial plan if either the provider fails to file a complete annual report, or CDSS has reason to believe that the provider is insolvent, is in imminent danger of becoming insolvent, is in a financially unsound or unsafe condition, or that its condition is such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts. Further, requires a provider to submit its financial plan (to include an explanation of how and when it will rectify the problems and deficiencies identified by CDSS) within 60 days of CDSS’s request, and requires CDSS to approve or disapprove the plan within 30 days of its receipt. Requires a provider to immediately implement an approved plan, and authorizes CDSS to take certain steps to

develop a corrective action plan at the provider's expense if the plan is disapproved or is determined to have not been fully implemented. (HSC 1793.13)

14) Requires a CCRC provider to include in its liquid reserve a reserve for its long-term debt obligations, as specified. (HSC 1792.3)

15) Requires a CCRC provider to include in its liquid reserve a reserve for operating expenses in an amount that equals or exceeds 75 days' worth of net operating expenses, as specified. (HSC 1792.4)

16) Establishes processes whereby a qualified administrator may be appointed to operate a CCRC facing imminent crisis situations, as specified. (HSC 1793.50)

FISCAL EFFECT: Unknown

COMMENTS:

Continuing Care Retirement Communities: CCRCs offer individuals ages 60 and older an option for housing and long-term care services, typically for the lifetime of the resident. The CCRC model involves residents signing a long-term continuing care contract, which constitutes an agreement between a provider and a resident that promises provision of a range of services (sometimes at an additional cost, depending on the type of contract) to the resident at the CCRC, allowing them to age in place. Services include housing, residential services, and nursing care.

Different types of continuing care contracts are offered by CCRCs, and these contracts contain varying provisions on costs, payment methods, services provided, and other elements. A prospective resident is typically required by their contract to pay an entrance fee and monthly fees. Entrance fees can range from \$100,000 to over \$1 million. Monthly fees vary, in part, according to the contract "type" involved. Continuing care contracts can be categorized as one of three "types": Type A contracts (sometimes referred to as "life care contracts"), are the most expensive and most-inclusive agreements wherein all housing, services and healthcare are covered by the entrance fee and monthly fees; Type B contracts generally provide discounted healthcare services for limited amounts of time, after which services can be purchased; and Type C contracts can offer the lowest entrance and monthly fees, but may require residents to be responsible for paying for healthcare services at market rates.

Continuing care contracts also vary as to whether or not they are refundable. If refundable, the contract refunds a portion of the entrance fees, sometimes on a scale that, over time, decreases the percentage of the entrance fee that is refunded. A CCRC must maintain a reserve for refunds (in addition to other reserves required for the operation of a CCRC) for refundable contracts. Many CCRC providers, however, choose instead to offer a "lump-sum payment" – that is, a repayment of a designated portion of the entrance fee that is conditioned upon resale of the unit; these contracts are sometimes referred to as "repayable" versus refundable. Providers offering repayable contracts are not required to have a reserve like providers offering refundable contracts do – it is assumed that the resale of the unit will result in the new resident's entrance fee covering the cost of repaying a portion of the former resident's entrance fee.

Two branches of CDSS's Community Care Licensing Division (CCLD) regulate CCRCs: the Adult and Senior Care Program oversees CCRC providers' compliance with community care

licensing laws and regulations related to care and supervision of residents, quality of services, accommodations, and grounds and buildings; the Continuing Care Branch reviews and approves applications to operate a CCRC, and also keeps track of the ongoing financial condition of all CCRC providers, monitoring their ability to fulfill the long-term contractual obligations to residents. As of June 29, 2018, there were 105 licensed CCRCs in California, with the capacity to serve a total of 31,828 individuals.

Need for this bill: CCRCs offer an attractive, promising option for some older Californians who are looking to live in an environment that will adapt to their changing needs over time as they age. CCRCs also involve substantial up-front and ongoing fees, requiring residents to make a significant financial commitment that can often involve selling their home and investing their savings in their new community. Unfortunately, there have been instances where some CCRC providers, through financial mismanagement or other circumstances, have had difficulty honoring initial agreements or have attempted to shift certain financial burdens to residents. This bill seeks to strengthen provisions of current law to prevent situations like this.

According to the author, “In Continuing Care Retirement Communities (CCRCs), seniors may move from independence to higher levels of care without leaving the community. CCRC residents often use their life savings to fund the substantial upfront payments and monthly fees in return for the peace of mind that their future care and service needs will be covered. However, that peace of mind can be broken if the provider’s ability to meet its obligations is undermined by financial problems. [This bill] aims to catch financial problems early, ensure that timely remedial action is initiated and that residents are kept in the loop as the Department of Social Services (Department), which oversees CCRCs, and providers work to address any financial issues the Department identifies.

“[This bill] establishes operational criteria the Department can employ in analyzing a CCRCs financial stability and specifies that, when the Department requires a provider to develop a plan to address issues of financial solvency, the provider also prepares regular progress reports and makes the plan and reports available to residents. [This bill] also replaces the monetary cap on the fund the Department uses to oversee CCRCs with a determination of financial resources adequate to fund the reasonable regulatory costs of the program. These steps will ensure that the Department and residents have the necessary resources and information to stop CCRC financial problems before they turn into a crisis.”

Staff comments: It is an important goal to ensure the financial health of CCRCs, which are entrusted with the care of, and require significant financial investments by, a number of older Californians. Many providers themselves support initiatives aimed at preventing the presence of bad actors in the industry. However, any such initiatives must strike a balance between raising red flags intended to identify and mitigate concerns and risks on the one hand, and continuing to permit the normal business activities of credible providers on the other. Triggers for state licensing intervention must be properly calibrated, and responses appropriate when action is taken. As currently structured, this bill contains some provisions that could use continued refinement. Specifically, ***should this bill move forward, the author is encouraged to continue to work with CDSS and stakeholders to address the following:***

- 1) ***Establishment of a proper “occupancy rate” trigger that both sets a rate far enough below industry averages so as to warrant concern, and that also measures occupancy rates over a sufficient period of time and with acknowledgment of reasons for low***

occupancy (e.g., remodeling, bringing newly constructed units online, and awaiting re-occupancy as tenancy turns over) that occur on the natural and do not signal concerns.

- 2) *Consideration of reasonable confidentiality standards for CCRC financial plans to be distributed to resident councils.*
- 3) *Use of accurate terminology and timeframes to reflect current statute and practice. The bill as currently written includes terms not commonly used by the industry or found in cross-referenced statute and creates certain timelines that do not align with existing requirements.*

PRIOR LEGISLATION:

AB 3088 (Chu) of 2018 would have required all CCRCs to file an actuary's opinion with CDSS at least once every five years, and would have required each CCRC to conduct a study of the facility at least once every five years for purposes of estimating maintenance costs. AB 3088 was vetoed by the Governor.

AB 713 (Chu), Chapter 613, Statutes of 2017, allowed a resident of a CCRC to dispute a transfer decision, and required the Continuing Care Contracts Branch of the CDSS to review a disputed transfer decision and make a determination as to whether or not the transfer was appropriate and necessary.

SB 939 (Monning), Chapter 112, Statutes of 2016, was similar to SB 475 and required continuing care contracts that contain lump sum contract termination payments conditioned on resale of the unit must meet a series of requirements and timelines, must pay interest after a special period of vacancy, and must meet other requirements.

SB 475 (Monning) of 2015 would have required that continuing care contracts which condition lump sum contract termination payments on resale of a unit to meet a series of requirements and timelines, to pay interest after a specified period of vacancy, and to meet other requirements. The bill would have also created a complaint process for residents if the repayment has not been made within 12 months. SB 475 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Continuing Care Residents Association (Sponsor)
Consumer Attorneys of California
209 Private Citizens

Opposition

None on file

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