

# SENATE BILL 91

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SB 276/14 – FIN

5lr0871

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By: **Senators Kelley, Astle, Benson, Feldman, Klausmeier, Madaleno, Mathias,  
Montgomery, Nathan–Pulliam, Pugh, and Young**

Introduced and read first time: January 26, 2015

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Continuing Care Retirement Communities – Continuing Care Agreements –**  
3 **Actuarial Studies**

4 FOR the purpose of altering the contents of a renewal application for a continuing care  
5 retirement community by requiring that actuarial studies reviewed by qualified  
6 actuaries be submitted on a certain basis for certain continuing care agreements;  
7 defining certain terms; and generally relating to continuing care retirement  
8 community continuing care agreements and actuarial studies.

9 BY repealing and reenacting, with amendments,  
10 Article – Human Services  
11 Section 10–401 and 10–413(a)  
12 Annotated Code of Maryland  
13 (2007 Volume and 2014 Supplement)

14 Preamble

15 WHEREAS, The majority of elderly Marylanders who enter contracts with  
16 continuing care retirement communities (CCRCs) have fee–for–service type (Type C)  
17 contracts; and

18 WHEREAS, Type C contracts require increased monthly fees for residents who move  
19 from independent living to the communities’ long–term care facilities; and

20 WHEREAS, CCRCs offering Type C contracts have substantial long–term liabilities  
21 because of large refunds owed when a resident dies or moves out of the community; and

22 WHEREAS, The only Maryland CCRC contracts that are not based on actuarial  
23 studies, including such factors as rates of mortality, morbidity, inflation, and return on  
24 investments, are Type C contracts; and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, Actuarial studies are required every 3 years on Maryland Type A and  
2 Type B CCRC contracts; now, therefore,

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
4 That the Laws of Maryland read as follows:

5 **Article – Human Services**

6 10–401.

7 (a) In this subtitle the following words have the meanings indicated.

8 (b) “Assisted living program” has the meaning stated in § 19–1801 of the Health  
9 – General Article.

10 (c) “Certified financial statement” means a complete audit prepared and certified  
11 by an independent certified public accountant.

12 (d) “Continuing care” means:

13 (1) continuing care in a retirement community; or

14 (2) continuing care at home.

15 (e) “Continuing care agreement” means an agreement between a provider and a  
16 subscriber to provide continuing care.

17 (f) (1) “Continuing care at home” means providing medical, nursing, or other  
18 health related services directly or by contractual arrangement:

19 (i) to an individual who is at least 60 years of age and not related by  
20 blood or marriage to the provider;

21 (ii) for the life of the individual or for a period exceeding 1 year; and

22 (iii) under a written agreement that requires a transfer of assets or  
23 an entrance fee notwithstanding periodic charges.

24 (2) “Continuing care at home” includes providing assistance with the  
25 physical maintenance of the individual’s dwelling.

26 (g) “Continuing care in a retirement community” means providing shelter and  
27 providing either medical and nursing or other health related services or making the  
28 services readily accessible through the provider or an affiliate of the provider, whether or  
29 not the services are specifically offered in the written agreement for shelter:

1 (1) to an individual who is at least 60 years of age and not related by blood  
2 or marriage to the provider;

3 (2) for the life of the individual or for a period exceeding 1 year; and

4 (3) under one or more written agreements that require a transfer of assets  
5 or an entrance fee notwithstanding periodic charges.

6 (h) (1) “Contractual entrance fee refund” means a repayment of all or part of  
7 a subscriber’s entrance fee to the subscriber or the subscriber’s estate or designated  
8 beneficiary, as required by the terms of the continuing care agreement.

9 (2) “Contractual entrance fee refund” does not include a payment required  
10 under § 10–446 or § 10–448 of this subtitle.

11 (i) “Conversion” means converting a physical plant that provides housing or  
12 shelter into a facility if:

13 (1) the residential accommodations exist before a statement of intent is  
14 filed under § 10–409(b) of this subtitle; and

15 (2) at least 60% of the available residential accommodations of the facility  
16 owner were occupied during the two fiscal years prior to the filing of a statement of intent.

17 (j) “Deposit” means a portion of an entrance fee.

18 (k) (1) “Entrance fee” means a sum of money or other consideration paid  
19 initially or in deferred payments, that:

20 (i) assures a subscriber continuing care for the life of the subscriber  
21 or for a period exceeding 1 year; and

22 (ii) is at least three times the weighted average of the monthly cost  
23 of the periodic fees charged for independent living and assisted living units.

24 (2) “Entrance fee” includes a fee of similar form and application, regardless  
25 of title.

26 (3) “Entrance fee” does not include a surcharge.

27 (l) (1) “Expansion” means any single new capital addition to an existing  
28 facility that meets either of the following criteria:

29 (i) if independent or assisted living units are to be constructed, the  
30 number of units to be constructed is less than or equal to 25% of the number of existing  
31 independent and assisted living units; or

(ii) if independent or assisted living units are not to be constructed, the total projected cost exceeds the sum of:

1. 10% of the total operating expenses, less depreciation, amortization, and interest expense of the facility as shown on the certified financial statement for the most recent fiscal year for which a certified financial statement is available; and

2. the amount of the existing reserves properly allocable to, and allocated for, the expansion.

(2) "Expansion" does not include renovation and normal repair and maintenance.

**(M) "EXTENSIVE AGREEMENT" MEANS A CONTINUING CARE AGREEMENT UNDER WHICH THE PROVIDER PROMISES TO PROVIDE RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND LONG-TERM CARE SERVICES IN A LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM:**

**(1) FOR AS LONG AS THE SUBSCRIBER NEEDS THE SERVICES; AND**

**(2) WITHOUT ANY SUBSTANTIAL INCREASE IN THE SUBSCRIBER'S ENTRANCE FEE OR PERIODIC FEES, EXCEPT FOR AN ADJUSTMENT TO ACCOUNT FOR INCREASED OPERATING COSTS CAUSED BY INFLATION OR OTHER FACTORS UNRELATED TO THE INDIVIDUAL SUBSCRIBER.**

**[(m)] (N) "Facility" means a physical plant in which continuing care in a retirement community is provided in accordance with this subtitle.**

**(O) "FEE-FOR-SERVICE AGREEMENT" MEANS A CONTINUING CARE AGREEMENT THAT IS EITHER:**

**(1) AN AGREEMENT:**

**(I) UNDER WHICH THE PROVIDER PROMISES TO PROVIDE RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND LONG-TERM CARE SERVICES IN A LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM FOR AS LONG AS THE SUBSCRIBER NEEDS THE SERVICES; AND**

**(II) THAT PROVIDES THAT LONG-TERM CARE SERVICES IN A LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM WILL BE PROVIDED AT A PER DIEM, A FEE-FOR-SERVICE, OR ANOTHER AGREED-ON RATE THAT GENERALLY REFLECTS THE MARKET RATES FOR ASSISTED LIVING AND COMPREHENSIVE CARE SERVICES; OR**

1           **(2) A CONTINUING CARE AGREEMENT THAT IS NOT AN EXTENSIVE**  
2 **AGREEMENT OR A MODIFIED AGREEMENT.**

3           **[(n)] (P)**     “Financial difficulty” means current or impending financial conditions  
4 that impair or may impair the ability of a provider to meet existing or future obligations.

5           **[(o)] (Q)**     “Governing body” means a board of directors, board of trustees, or  
6 similar group that ultimately directs the affairs of a provider, but whose members are not  
7 required to have an equity interest in the provider.

8           **[(p)] (R)**     (1)   “Health related services” means services that are needed by a  
9 subscriber to maintain the subscriber’s health.

10                   (2)   “Health related services” includes:

11                           (i)   priority admission to a nursing home or assisted living program;  
12 or

13                           (ii)   except for the provision of meals, assistance with the activities of  
14 daily living.

15           **(S)   “MODIFIED AGREEMENT” MEANS A CONTINUING CARE AGREEMENT:**

16                   **(1)   UNDER WHICH THE PROVIDER PROMISES TO PROVIDE**  
17 **RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND A LIMITED AMOUNT OF**  
18 **LONG-TERM CARE SERVICES IN A LICENSED ASSISTED LIVING PROGRAM OR**  
19 **COMPREHENSIVE CARE PROGRAM:**

20                           **(I)   FOR AS LONG AS THE SUBSCRIBER NEEDS SERVICES; AND**

21                           **(II)   WITHOUT ANY SUBSTANTIAL INCREASE IN THE**  
22 **SUBSCRIBER’S ENTRANCE FEE OR PERIODIC FEES, EXCEPT FOR AN ADJUSTMENT TO**  
23 **ACCOUNT FOR INCREASED OPERATING COSTS CAUSED BY INFLATION OR OTHER**  
24 **FACTORS UNRELATED TO THE INDIVIDUAL SUBSCRIBER; AND**

25                   **(2)   THAT PROVIDES THAT LONG-TERM CARE SERVICES IN A**  
26 **LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM**  
27 **BEYOND THE LIMITED AMOUNT OF SERVICES TO BE PROVIDED UNDER ITEM (1) OF**  
28 **THIS SUBSECTION WILL BE PROVIDED AT A PER DIEM, A FEE-FOR-SERVICE, OR**  
29 **ANOTHER AGREED-ON RATE.**

30           **[(q)] (T)**     “Person” includes a governmental entity or unit.

31           **[(r)] (U)**     “Processing fee” means a fee imposed by a provider for determining the  
32 financial, mental, and physical eligibility of an applicant for entrance into a facility.

1            **[(s)] (v)**        “Provider” means a person who:

2                    (1)        undertakes to provide continuing care; and

3                    (2)        is:

4                            (i)        the owner or operator of a facility; or

5                            (ii)       an applicant for or the holder of a preliminary, initial, or renewal  
6 certificate of registration.

7            **[(t)] (w)**        “Records” means information maintained by a provider for the proper  
8 operation of a facility under this subtitle.

9            **[(u)] (x)**        (1)        “Renovation” means any single capital improvement to, or  
10 replacement of, all or part of an existing facility that will not increase the number of  
11 independent or assisted living units and for which the total projected cost exceeds the sum  
12 of:

13                            (i)        20% of the total operating expenses, less depreciation,  
14 amortization, and interest expense of the facility as shown on the certified financial  
15 statement for the most recent fiscal year for which a certified financial statement is  
16 available; and

17                            (ii)       the amount of existing reserves properly allocable to, and  
18 allocated for, the renovation.

19                    (2)        “Renovation” does not include normal repair or maintenance.

20            **[(v)] (y)**        “Subscriber” means an individual for whom a continuing care  
21 agreement is purchased.

22            **[(w)] (z)**        (1)        “Surcharge” means a separate and additional charge that:

23                            (i)        is imposed simultaneously with the entrance fee; and

24                            (ii)       may be required of some, but not all, subscribers because of a  
25 condition or circumstance that applies only to those subscribers.

26                    (2)        “Surcharge” does not include a second person entrance fee.

27 10–413.

28            (a)        (1)        Each year, within 120 days after the end of a provider’s fiscal year, the  
29 provider shall file an application for a renewal certificate of registration in a form  
30 satisfactory to the Department.

1 (2) A renewal application shall contain:

2 (i) any additions or changes to the information required by §§  
3 10–408 through 10–410 of this subtitle;

4 (ii) an audited financial statement for the preceding fiscal year  
5 prepared in accordance with an audit guide that the Department adopts;

6 (iii) an operating budget for the current fiscal year and a projected  
7 operating budget for the next fiscal year;

8 (iv) a cash flow projection for the current fiscal year and the next two  
9 fiscal years;

10 (v) a projection of the life expectancy and the number of residents  
11 who will require nursing home care;

12 (vi) [an actuarial study reviewed by a qualified actuary and  
13 submitted every 3 years,] unless the provider is exempted from the requirement for an  
14 actuarial study by regulations adopted by the Department exempting categories of  
15 providers that the Department determines have substantially limited [long-term care]  
16 liability exposure, **AN ACTUARIAL STUDY REVIEWED BY A QUALIFIED ACTUARY AND**  
17 **SUBMITTED AT LEAST:**

18 **1. EVERY 3 YEARS FOR A PROVIDER WITH EXTENSIVE OR**  
19 **MODIFIED AGREEMENTS; AND**

20 **2. EVERY 5 YEARS FOR A PROVIDER WITH**  
21 **FEE-FOR-SERVICE AGREEMENTS ONLY;**

22 (vii) the form and substance of any proposed advertisement,  
23 advertising campaign, or other promotional material not previously submitted to the  
24 Department; and

25 (viii) any further information that the Department requires.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2015.