

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.