

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE
Mariko Yamada, Chair
AB 1751 (Bloom) – As Amended: March 26, 2014

SUBJECT: Continuing Care Retirement Community (CCRC) governing bodies.

SUMMARY: Increases the number of resident members on a CCRC governing body and extends voting powers to those members; requires quarterly distribution and internet posting of financial statements. Specifically, this bill:

- 1) Requires a CCRC provider to provide quarterly, rather than semi-annual, financial statements of activities comparing actual costs against budgeted costs broken down by expense category.
- 2) Requires written explanations of significant budget variations within those financial statements.
- 3) Requires annual reports be posted on an internet website administered by the CCRC.
- 4) Requires a single facility CCRC governing body to accept a minimum of three residents, or a number equal to 25 percent of the number of members on the governing board, as voting members of the governing board, in addition to the current requirement that at least one resident be a non-voting member of the board.
- 5) Requires a multi-facility governing body to have at least three residents from any of the facilities, or a number of residents equal to 25 percent of the governing board, whichever is greater, to participate as voting members, and to provide those CCRCs without direct representation meeting notices, material and minutes from board meetings.
- 6) Requires multi-facility providers to assure that meeting notices, packets, minutes and other material of a multi-facility governing body are provided to resident associations or each facility.
- 7) Allows resident representatives to be present during Executive Session of the governing board.

EXISTING LAW:

- 1) Under the Residential Care Facilities for the Elderly (RCFE) Act, provides for the licensure and regulation of RCFEs by the Department of Social Services (DSS).
- 2) Provides for the regulation by DSS of activities relating to continuing care contracts that govern care provided to an elderly resident in a CCRC for the duration of the resident's life, or a term in excess of one year.
- 3) Requires a CCRC provider to receive a certificate of authority from the DSS in order to enter into such contracts.

- 4) Sets forth particular rights to which a resident of a CCRC is entitled, in addition to any otherwise applicable civil or legal rights, benefits or privileges, including, among others, the right to live in an attractive, safe and well maintained physical environment, and the right to organize and participate freely in the operation of resident associations.
- 5) Finds and declares that residents of continuing care retirement communities have a unique and valuable perspective on the operations of and services provided in the community in which they live; that resident input into decisions made by the provider is an important factor in creating an environment of cooperation, reducing conflict, and ensuring timely response and resolution to issues that may arise; and that continuing care retirement communities are strengthened when residents know that their views are heard and respected.
- 6) Encourages continuing care retirement communities to exceed the minimum resident participation requirements.
- 7) Requires the governing body of a CCRC to hold at least semiannual meetings with the residents for the purpose of the free discussion of income and expenditures, financial trends, and issues related to proposed changes in policies, programs, and services.
- 8) Requires each provider to make available financial statements comparing actual costs to budgeted costs broken down by expense category, and to consult with the residents during budget planning processes.
- 9) Requires the governing body of a single facility CCRC to accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.
- 10) Requires multi-facility CCRCs to have either one non-voting member of the governing body for each CCRC in the state, or have an elected committee composed of residents nominate at least one individual for every three (or fraction therefore) CCRCs operated in the state, and inform resident associations of facilities without direct representation of meeting notices, material, and minutes from board meetings.

FISCAL EFFECT: Unknown

COMMENTS:

Background on Continuing Care Retirement Communities:

CCRCs offer a long-term continuing care contract with prospective residents that provides housing, residential services and nursing care, usually in one location, and usually for a resident's lifetime. Most, but not all, CCRCs provide three levels of care: independent living, assisted living, and skilled nursing care. A resident may begin in the independent living mode, but move to a higher level of care as his or her mental or medical condition declines, and they become more dependent upon others. Some CCRCs contract with a separate entity to provide assisted living and skilled nursing in a "health center" located within the CCRC. CCRCs largely offer services to persons who have the means to invest a significant sum in an entrance or admission fee. These fees commonly range into the hundreds of thousands of dollars. CCRCs can be not-for-profit, or for-profit entities. Not-for-profit organizations often have philanthropic missions to

serve older adults across the economic spectrum and at various life-stages, and many provide and/or develop low-income housing options, promote wellness through their community-based programs, and fundraise to provide charity care when residents exhaust their funds.

The entire facility is licensed as an RCFE by the Community Care Licensing Division (CCLD) of DSS, and, separately, receives a Certificate of Authority from the Continuing Care Contracts Branch (CCCB) of DSS. The Continuing Care Contracts Branch (Branch) enforces the Health and Safety Code, statutes governing continuing care providers. The Branch is responsible for evaluating the performance and financial health of providers to monitor their financial position and ability to fulfill their contractual obligations to the residents. This is accomplished by among other things, monitoring economic and marketing feasibility for all new developments; reviewing annual audited financial statements and reserve reports to ensure continuing care providers establish required reserves; reviewing financial transactions that result in an encumbrance or lien on the continuing care retirement community property or its revenues; monitoring continuing care providers with potential financial problems; reviewing continuing care contracts for compliance with the statutes; and ensuring that disclosure of basic information about continuing care providers is distributed. Additionally, if a skilled nursing facility is operating on the CCRC premises, it must be licensed by DPH. Generally, CCLD administers and enforces rules relating to health and safety, and the CCCB focuses on financial and contractual matters.

Residents pay a significant sum to live in a CCRC yet have only limited input into the financial decision-making of the board that governs it. Residents have, in the past, expressed concerns about decisions to expand, buy, build new facilities, and other activities that could result in higher fees. Some residents are fearful that if fees become too high, they will deplete their own funds, limiting their ability to control their lives.

Author's Statement: "As the population of elderly Californians grows, it is essential that an effective and fair infrastructure of care is created to meet the increasing needs of the aging population. Almost 20,000 California seniors currently reside in the state's nearly 100 Continuing Care Residential Communities (CCRC). CCRC's provide seniors with a variety of housing options and a continuum of care to meet the ongoing needs of aging, including independent living, supported or assisted living, short or long term nursing care, and memory support or special care. CCRCs are attractive to many seniors because they offer the opportunity to receive services in their homes and age in place.

"Under current law, the governing board of a CCRC is only required to admit one non-voting resident member. This means that major decisions about the future of the community are made almost entirely without resident consent. Furthermore, CCRC administrators are only required to provide financial statements of activities to residents semiannually. Many residents pay hundreds of thousands of dollars of their lifesavings to join CCRCs and they deserve representation and accountability that is reflective of their investment. AB 1751 allows CCRC residents to more effectively engage with the management of their communities by ensuring they are properly represented on CCRC boards. The bill requires provider boards to admit three voting resident members or a number of residents equal to 25% of the board. Additionally, the bill encourages CCRCs to be more financially accountable to their residents by requiring them to release financial reports quarterly and post their annual statements online. Releasing these quarterly statements will allow residents to stay appraised on the fiscal health of their communities. Furthermore, access to this important financial information will help seniors make informed choices regarding the sustainability of CCRCs they are considering relocating too."

Supporters Argue:

The California Continuing Care Residents Association (CalCRA), an organization whose primary mission is to ensure that the legal and contractual commitments of providers with respect to residents are protected and promoted, states that AB 1751 helps residents of continuing care retirement communities protect their investments, and engage meaningfully in their communities. According to CalCRA, AB 1751 does so by providing fair and equal representation on provider boards and by making financial information available to residents to help ensure that the resident continues to make healthy decisions about their investment in the CCRC.

The California Advocates for Nursing Home Reform states that under present statute, residents of CCRCs have no rights, to be represented as full voting members on providers' boards of directors; their representation is only advisory in nature. CANHR identifies a variety of California CCRCs that already have voluntarily histories of voting representation of residents on their boards.

The Consumer Federation of California writes in support of the prospect of residents having the same authority to place items on CCRC board agendas as those board members who do not live at the facility.

Donna Ambrogi, founder of the California Law Center on Long-term Care who has served for six years as a voting member of a CCRC, states CCRC residents who are full members of the board with the right to vote, are in the best position to voice the concerns of residents and to work collaboratively with other board members to ensure the future viability of the community.

Opponents Argue:

Multiple CCRCs wrote to express opposition with provisions of AB 1751 relating to the selection of residents to serve on the governing boards of the facility. Opponents argue that placing residents on the governing board is a violation of the California Corporations Statute that govern non-profit board activities, relating to self-dealing.

LeadingAge, a statewide organization which represents hundreds of providers of not-for-profit senior residential care options serving over 100,000 older Californians throughout the state expresses concern that AB 1751 mandates the appointment of up to 25 percent of a governing board's membership which would set an onerous precedent because residents could have conflicts of interest on matters coming before the board, particularly regarding their fees, and would have to disqualify themselves from participating in major decisions. Corporate and organizational activities of boards-of-directors require skill, knowledge and commitment, therefore, the board itself should have latitude on who to allow to serve on such entities.

Previous Legislation:

AB 827 (Speier), Chapter 920, Statutes of 1995, established the Department of Social Services as the regulator of CCRCs and required minimum standards in continuing care contracts.

SB 309 (Ortiz), Chapter 553, Statutes of 2002, added non-voting resident representatives to a CCRC governing board.

REGISTERED SUPPORT / OPPOSITION:

Support

California Continuing Care Residents Association-Sponsor
California Advocates for Nursing Home Reform (CANHR)
California Communities United Institute
California Senior Legislature
Consumer Federation of California
National Association of Social Workers (NASW)-California Chapter
One individual.

Opposition

American Baptist Homes of the West – Oppose Unless Amended
Atherton Baptist Homes – Oppose Unless Amended
be.group – Oppose Unless Amended
California Association of Continuing Care Retirement Communities-Oppose Unless Amended
Carlsbad by the Sea – Oppose Unless Amended
Carmel Valley Manor – Oppose Unless Amended
Casa de las Campanas – Oppose Unless Amended
Casa de Manana – Oppose Unless Amended
Fredericka Manor – Oppose Unless Amended
front porch – Oppose Unless Amended
Heritage on the Marina – Oppose Unless Amended
LeadingAge California – Oppose Unless Amended
Monte Vista Grove Homes – Oppose Unless Amended
O'Connor Woods – Oppose Unless Amended
Paradise Valley Estates
Retirement Housing Foundation – Oppose Unless Amended

Analysis Prepared by: Robert MacLaughlin / AGING & L.T.C. / (916) 319-3990