Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE
Ash Kalra, Chair
AB 3088 (Chu) – As Amended April 12, 2018

SUBJECT: Continuing care contracts: retirement communities.

SUMMARY: Requires all Continuing Care Retirement Communities (CCRCs) to file an actuary opinion with the Department of Social Services (DSS) at least once every five years regarding the provider's actuarial financial condition. Specifically, **this bill**:

1) Deletes the reference to entrance into Type A contracts as a condition under which certain CCRC providers must file an actuarial report with DSS, thereby applying this requirement to providers regardless of contract type offered.

2) Requires all Continuing Care Retirement Communities to file an actuary opinion with the Department of Social Services at least once every five years regarding the provider's actuarial financial condition.

3) Requires a CCRC provider to post a copy of the actuary's opinion at the facility and on the provider's Internet Web site, as specified, within 10 days of filing the actuary's opinion with DSS.

4) Requires each CCRC provider, at least once every three years, to conduct a review of the accessible areas that the provider is obligated to repair, replace, restore, or maintain within the facility. The board of each provider shall use the review to consider and implement necessary adjustments to its reserve account requirements.

5) Requires the study to include at least all of the following:

    a) Identification of components a provider is obligated to repair, replace, restore, or maintain that have a remaining useful life of less than 20 years as of the date of the study, and the probable remaining useful life of those components;
    b) An estimate of the cost to repair, replace, restore, or maintain the components;
    c) An estimate of the total annual contribution necessary to defray the costs of repairing, replacing, restoring, or maintaining those components both during and at the end of their useful life; and,
    d) A funding plan describing how the provider intends to fund the obligations of repairing and replacing the identified components, as specified.

6) Requires each provider to submit, at least once every three years, a summary of the study, as well as any necessary adjustments the provider has made or intends to make, as a result of the study.

7) Requires a provider, within 10 days of the summary and adjustment being filed with DSS, to post a copy of the study at the facility and on its Internet Web site, as specified.

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 DSS.

2) Defines a "continuing care retirement community" as 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.

3) Provides for the certification and regulation of CCRCs by DSS.

4) Authorizes the Continuing Care Contracts Branch of DSS to enforce certain health and safety regulations, as specified.

5) Defines an "actuarial study" as an analysis that address the current financial condition of a provider that is performed by an actuary, and includes: an actuarial report, a statement of actuarial opinion, an actuarial balance sheet, a cohort pricing analysis, a cash flow projection, and a description of the actuarial methodology, formulae, and assumptions.

6) Requires each provider that has entered into Type A contracts to submit to DSS, at least once every five years, an actuary's opinion as to the provider's actuarial financial condition of the provider's continuing care operations.

7) Requires providers that held a certificate of authority on December 31, 2003, to file their actuary's opinion before the expiration of five years following the date it last filed an actuarial study or opinion, and requires providers that did not hold a certificate of authority on December 31, 2003, to file their actuary's opinion within 45 days following the due date for the provider's annual report for the fiscal year in which the provider obtained its certificate of authority.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

Author's Statement: "When CCRCs do not properly evaluate financial risk and plan to ensure sustainability of their communities, senior residents living in those facilities bear a significant burden.

"Moving into a CCRC is a costly decision, requiring advanced planning for residents and their families. CCRCs require a substantial entrance fee and a contract, along with the promise of future benefits in return similar to an insurance promise. Like any insurance policy, there are elements of risk. However, existing law only requires a handful of CCRCs to conduct a formal study primarily on risk assessment.

"It is only logical for these studies to be required for all CCRCs to protect owners and operators as well as minimize the need to increase monthly fees residents would have to pay to cover unforeseen cost. Ultimately, this bill promotes sensible business practices and protects seniors ready to enter into retirement."

BACKGROUND:

Continuing Care Retirement Communities (CCRCs):
CCRCs, provide long-term care contracts that offer housing, residential services, and nursing care, and are an attractive option for seniors as these services are provided in one location.

California currently has 110 CCRCs, nearly 50% of which are nonprofit. DSS is responsible for the licensure and oversight of these facilities, and it is the Continuing Care Branch within the Community Care Licensing Division (CCLD) that is responsible for reviewing and approving applications to operate a CCRC. The Branch also monitors the ongoing financial condition of all CCRC providers in addition to their ability to fulfill long-term contractual obligations to residents.

Contract Types: CCRCs offer several types of contracts. Typically the parameters of the contracts require residents to pay substantial entrance fees, which can range from $100,000 to $1 million, in addition to any ongoing monthly fees. CCRCs are referred to by three types.

Type A: Also known as life care contracts, Type A contracts are often the most expensive contract type, but are also the most inclusive as they cover the housing, services, and healthcare needs of a resident. Under Type A contracts, a CCRC absorbs the cost of increased care residents may need as they age, and current law requires facilities that provide Type A contracts to submit an annual actuary report to DSS once every five years.

Type B: Also called modified contracts, Type B contracts typically offer lower entrance and monthly fees and offer limited health care services to a resident without an increase in his or her monthly fees. For example, if a resident needs skilled nursing services for a short period of time, he or she may, for a short period of time, stay in a skilled nursing facility without experiencing increased costs. Extended stays, however, may be subject to increased fees depending on the circumstances.

Type C: Also known as fee-for-service contracts, include similar residential services, housing, and amenities offered by Type A and B contracts, but require residents to pay market rates for any necessary health-related services. Type C contracts typically offer lower entry and monthly fees, however the responsibility of increases in expenses for long-term care with the resident are not the financial responsibility of the facility.

Refundable vs. Repayable Contracts: CCRCs often offer contracts to residents that enable a resident (or his or her estate, in the event of the resident's death) to receive the cost of his or her initial entrance fee when terminating his or her contract. Contracts are classified as either "repayable" or "refundable." Repayable contracts include a promise by the provider to repay all or a portion of an entrance fee; however, that repayment is conditional upon the re-occupancy or resale of the unit that was previously occupied by the resident to whom the entrance fee is owed. In contrast, refundable contracts include a promise by the provider to pay an entrance fee refund to the resident, and are required to maintain a reserve fund, which is required to be revised on an annual basis in order to ensure adequate funds to cover the costs of each individual resident holding a refundable contract. The key difference between repayable and refundable contracts is the source of the funds; repayable contracts generate the required funds as a result of reselling the resident's unit, while refundable contracts appropriate funds from an existing reserve account.

It is important to note that the type of contract a resident enters into, be it Type A, B, or C, pertains only to the services provided to residents and the associated fees for those services, if applicable. The type of contract does not dictate whether a contract is refundable or repayable; whether a contract is refundable or repayable is denoted in the contract itself, and current law requires that residents be made aware of whether their contract is refundable or repayable at the time he or she signs the contract.

Actuarial Opinions: Actuaries are responsible for assessing and issuing opinions regarding the financial obligations and risks of businesses and organizations, such as insurance companies or businesses that sell insurable products. Unlike an accountant, who is responsible for compiling and comparing financial records in order to ensure businesses and governments run accurately and efficiently, actuaries and their subsequent opinions regarding the financial obligations of a business or company enable those entities to gauge the risk of various financial liabilities. California law requires all CCRCs that enter into Type A contracts to submit an actuary's opinion to DSS once every five years. These opinions predict the potential financial obligations of a CCRC should the facility find it necessary to cover the costs of increased care for residents with Type A contracts.

It is the unique nature of Type A contracts that trigger the need for an actuarial study, as these contracts explicitly require CCRCs to cover the costs of increased care for these residents. It should be noted, however, that current law requires an actuarial study to contain a summary of the financial condition of the provider, not just the financial liability of a provider's contractual obligation to finance the ongoing healthcare costs of residents with Type A contracts. In short, current law requires CCRCs to review the financial liabilities of all contracts at the facility, be they Type A, B, C, or a combination thereof.

All CCRCs are required to submit an annual report consisting of audited financial statements and required reserve calculations, with certified public accountants' opinions, additional reserve information, and evidence of fidelity bond, if applicable. These reports include details on reserves, disclosure of any amounts accumulated or expended for identified projects, and full details on any increase in monthly care fees, among other things. The Annual Report is intended to summarize the provider's performance in a form useful to residents, prospective residents, and the department. If the department determines that a provider's annual audited report needs further analysis and investigation, the provider shall reimburse DSS for costs incurred.

Required Key Indicators Report is also mandated annually and discloses key financial ratios and other key indicators, including operational data, margin ratios, liquidity indicators, and annual capital expenditures, among others. The formulas are determined by DSS. The report covers indicators for the past five years, based on actual experience, and projected for the upcoming five years. If, upon review of these reports and other information, DSS has reason to believe there is financial distress, it may require a financial plan to correct the situation.

Argument in Support: According to the California Continuing Care Residents Association, "Actuarial studies help CCRC providers identify long-term financial risks and develop policies and solutions that minimize the impact of those risks on residents. Actuaries analyze data to estimate the probability of events and their likely short and long-term costs to the provider, this includes analyzing population projections and cash flow projections for the CCRC. All of these estimates and projections are important in maintaining the financial solvency of the CCRC.

"It is important to note that these risks exist regardless of the type of contract that is offered at the CCRC. The risk that an actuary measures is inherent in all CCRC's because all CCRC's offer the same underlying promise – to accommodate residents as their healthcare needs change. It is the function of the actuary to bring these risks into focus and project the financial future of the organization."

Argument in Opposition: LeadingAge California states, "We believe that this proposal is costly and unnecessary for CCRCs that do not offer Type A contracts. Non-Type A contracts do not include a promissory note of care, which significantly limits the financial risk borne by the CCRC. Requiring CCRCs that do not offer Type A contracts to complete an actuarial analysis will, at best, provide a nominal benefit at a significant expense, which could lead to an increase in current resident's monthly fees. Furthermore, current law already requires all CCRCs in California to provide substantial financial information to DSS on an annual basis, including audited financial statements, detailed explanations on any monthly fee increases and detailed key indicators on the financial health of the community. This information, which both DSS and residents have unfettered access to, provides a transparent and comprehensive picture that ensures the financial stability and solvency of the CCRC."

A 2008 U.S. Government Accountability Office (GAO) report entitled "Older Americans: Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk" states that "…one CCRC we reviewed uses actuarial studies with mortality and morbidity rates to assess the likely inflow, outflow and turnover of the CCRC occupants. Other CCRCs use some combination of resident statistics, Medicare and Medicaid reimbursement rates, marketing needs, and operating costs." The report also states that "According to industry participants, only an actuarial study incorporates mortality, morbidity, and other information unique to a CCRC to help it anticipate and make plans to address risks to its long-term viability, such as lower-than-expected occupancy levels and higher-than-expected costs."

California statute is silent on the components an actuarial study of a CCRC must contain. Section 1792.10 of the California Health and Safety Code states that an actuarial study of a CCRC must be conducted every five years, however, the factors upon which the study is based are not described in statute. It should also be noted that, currently, DSS does not promulgate regulations dictating the operational administration of CCRCs, such that any regulation of CCRCs must be explicitly written in statute.

REGISTERED SUPPORT / OPPOSITION:

Support

California Continuing Care Residents Association – Sponsor

Opposition

California Assisted Living Association (CALA)
LeadingAge California

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