Date of Hearing: April 4, 2017

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE
Ash Kalra, Chair
AB 713 (Chu) – As Amended March 23, 2017

SUBJECT: Continuing care retirement facilities: transfers of residents

SUMMARY: Allows a resident of a Continuing Care Retirement Community (CCRC) to dispute a transfer decision, and requires the Continuing Care Contracts Branch of the Department of Social Services (DSS) to review a disputed transfer and determine if the transfer was appropriate and necessary. Specifically, **this bill**:

1) Allows a resident of a Continuing Care Retirement Community to dispute a transfer decision.

2) Requires the Continuing Care Contracts Branch to provide a description of the steps a provider took and the factors a provider considered in deciding to transfer a resident, including the assessment tool or tools and the scoring and evaluating criteria used by the provider to justify the transfer.

3) Directs the Continuing Care Contracts Branch to, in addition to determinations it is already required to make regarding a disputed transfer, to also determine whether the disputed transfer is appropriate and necessary.

4) Requires a continuing care retirement community, prior to any transfer decision in the assessment process that forms the basis for the level of care transfer decision, to offer an explanation of the assessment process.

5) Requires the assessment to include, but not be limited to, an evaluation of the physical and cognitive capacities of the resident including scoring and evaluating criteria, which must be used in the determination of the appropriateness of the transfer.

6) Requires copies of the completed assessment to be shared with the resident or the resident's responsible person.

EXISTING LAW:

1) Requires a continuing care retirement facility, as defined, to possess a certificate of authority issued by the State Department of Social Services before it can enter into a continuing care contract with a resident and that a continuing care contract be in writing and contain specified information.

2) 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, in exchange for an entrance fee and/or the payment of periodic charges.

3) Defines a "continuing care retirement community" (CCRC) 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.

4) Requires a continuing care contract to include the procedures and conditions under which a resident may be voluntarily or involuntarily transferred from a designated living unit, while taking into account the appropriateness and necessity of the transfer.

5) Authorizes the resident or the resident's responsible person to dispute a transfer decision, and requires a timely review of transfer disputes by the Continuing Care Contracts Branch and requires any transfer decision to be in writing.

6) Requires, prior to any transfer under those provisions, the continuing care retirement community to satisfy certain requirements, including, but not limited to, involving the resident and the resident's responsible person in the assessment process that forms the basis for the transfer and providing an explanation of the assessment process and provide copies of the completed assessment if requested.

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author's office, "CCRCs provide an attractive 'age in place' model for seniors, guaranteeing a long-term care contract that provides housing, residential services, and nursing care in one location and usually for the resident's lifetime. In return, residents pay an entry fee and an adjustable monthly fee based on the services used that month. California's aging population, and the attractiveness of the CCRC model, has led to a high demand in retirement living and a growth in the CCRC industry. [This bill] ensures that high demand and financial interests of the retirement community are not putting pressure on providers to accelerate the transfer process for current residents.

Without a requirement for the CCRC to conduct an assessment of the resident, prior to an involuntary transfer, there is no documented justification for the necessity and appropriateness of that transfer. An assessment ensures that the provider is putting the resident's wellbeing and health ahead of any other consideration for the involuntary transfer. If disputed, it is essential that the department is able to consider all of the factors weighing the provider's decision for the transfer, including whether or not the residents physical or cognitive condition warrants an involuntary transfer that will result in reduced independence and higher fees to the resident."

Continuing Care Retirement Communities: As California's population ages, seniors are faced with a variety of options for retirement living. Continuing Care Retirement Communities may be an attractive option for individuals and provide long-term care contracts that offer housing, residential services, and nursing care, often in one location and often for a resident's lifetime. Currently, California has approximately 107 CCRCs with over 20,000 units. Of those, roughly 65% of CCRCs are non-profit. Under DSS, the Community Care Licensing Division (CCLD) is responsible for the oversight of these facilities and ensuring compliance with regulations. Specifically, the Continuing Care Branch is responsible for reviewing and approving applications to operate a CCRC and monitoring the ongoing financial condition of all CCRC providers and their ability to fulfill the long-term contractual obligations to residents.

CCRCs offer a variety of contracts, some of which are refundable, while others are non-refundable. These contracts typically require residents to pay a substantial entrance fee, which can often range from $100,000 to $1 million, as well as ongoing monthly fees. CCRCs are referred to by three "types":

- Type A contracts, also known as life care contracts, are often the most expensive contract type, but also the most inclusive as they cover all 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.

- Type B contracts, often called modified contracts, typically offer lower entrance and monthly fees and offer limited health care services that may be accessed without any increase in a resident's monthly fee. For example, if a resident needs skilled nursing services for a limited amount of time, they may stay in a skilled-nursing facility for a certain duration of time and not experience an increase in costs; an extended stay, however, could result in increased costs to the resident under this contract type.

- Type C contracts, also known as fee-for-service contracts, include similar housing, residential services and amenities as Type A and B contracts but require residents to pay market rates for any health-related services under an as needed arrangement. Type C contracts typically offer lower entrance fees and monthly fees but the risk of large long-term-care expenses remain with the resident such that risk of increased care expenses are not shifted to the facility.

Types of facilities: CCRCs are comprised of several living arrangements that focus on providing services for retired individuals moving through the aging process. CCRCs are part independent living, part assisted living, and part skilled nursing homes. Upon entering a CCRC, and depending on the type of contract under which a resident enters the facility, a resident can live independently in single-family homes, apartments, or condominiums. When a resident later requires assistance with daily living, CCRCs offer assisted living or nursing care settings.

Resident transfers: As a CCRC resident ages, his or her needs often change such that he or she may eventually transition from independent living settings to settings that offer more assistance in daily living. Residents may transfer voluntarily or be transferred involuntarily, and current law provides CCRCs with the ability to determine if a resident transfer is necessary. Current law requires that a CCRC take into account certain criteria when determining if a resident should be transferred, including: whether a resident is nonambulatory; if the resident has developed a physical or mental condition that endangers the health, safety, or well-being of the resident or another individual; and if the resident's condition warrants a transfer to an assisted living facility due to a need for an increased level of care. Currently, CCRCs are required to include the resident or resident's responsible person in the assessment process which determines whether or not a resident is transferred, however current law does not require CCRCs to use a uniform assessment tool that considers certain criteria when determining if a transfer is appropriate. At present, the Continuing Care Contracts Branch is able to review a resident-disputed transfer to ensure that the provider adequately complied with the transfer process; however, current law is silent on whether the Continuing Care Contracts Branch must determine the appropriateness and necessity of the transfer based on the evaluating criteria used by the CCRC when making the decision to transfer a resident.

Fiscal impact of transfers: Because CCRCs utilize the three aforementioned contract types, certain individuals who are transferred to a higher level of care stand to incur increased monthly fees as a result of the move. For individuals who are involuntarily transferred, these increased costs may be unexpected and unmanageable. In addition to this, because CCRCs are an attractive retirement option for many individuals, CCRCs can quickly resell vacant units, often for very large entrance fees. Because a resident who is transferred to a higher level of care is still a resident of the CCRC, he or she is not entitled to a refund on his or her initial entrance fee and, therefore, a CCRC may be allowed to sell a vacant unit without refunding the entrance fee to the original resident as it is specified in the resident's contract because the resident has not yet terminated his or her contract, but simply moved to another setting within the CCRC.

Arguments in Support: According to the California Continuing Care Residents Association (CALCRA), who is a sponsor of this bill, "There are a number of factors a provider must consider when deciding to initiate a resident transfer, including the president's health, physical and cognitive abilities, availability of services, and whether or not the resident's unit can be quickly re-occupied by a new resident. An assessment tool to determine the state of the president's health, including the physical, cognitive, mental and emotional functional abilities of the individual, must be conducted by the provider. Without it, the department has nothing to justify the medical necessity of the transfer…then residents are left to wonder if the decision to transfer them to a higher level of care was driven by the provider's financial interest in raising their costs and bringing in new resident entrance fees."

Arguments in Opposition: None.

REGISTERED SUPPORT / OPPOSITION:

Support

California Continuing Care Residents Association (CALCRA) – Sponsor
California Advocates for Nursing Home Reform (CANHR)
California Long-Term Care Ombudsman Association (CLTCOA)
California Retired Teachers Association (CalRTA)
Consumer Federation of California (CFC)
Several individuals (100+).

Opposition

None on file.

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