Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE
Cheryl Brown, Chair
SB 939 (Monning) – As Amended June 16, 2016

SENATE VOTE: 34-0

SUBJECT: Continuing care contracts: cancellation: payments.

SUMMARY: This bill requires continuing care contracts which contain repayable contracts conditioned on resale of the unit to meet a series of requirements and timelines, and to pay interest after a specified period a unit remains vacant. Specifically, **this bill**:

1) Clarifies the definition of "repayable contract" by explicitly defining it to mean a continuing care contract that includes a promise to repay all or a portion of an entrance fee that is conditioned upon re-occupancy or resale of the unit previously occupied by the resident.

2) Allows a provider to repay all or a portion of an entrance fee before the resale of the unit.

3) Prohibits a provider from charging a resident or his or her estate a monthly fee once a unit has been permanently vacated by the resident, unless that fee is part of an equity interest contract.

4) Requires any balance of the lump sum due a resident per a repayable contract entered into on or after January 1, 2017, to accrue interest as follows:

   a) Any amount owed a resident that is not paid within 180 days after the resident's termination of the repayable contract shall accrue simple interest at a rate of 4% of the amount owed.

   b) Any amount owed a resident that is not paid within 240 days after the resident's termination of the repayable contract shall accrue simple interest at a rate of 6% of the amount owed.

   c) Any amount owed a resident that is not paid within one year after the initial 240-day period after the resident's termination of the repayable contract shall accrue compound interest annually at a rate of 6%.

5) Requires a continuing care contract to contain the policy or terms for repaying a lump sum of any portion of the entrance fee and requires, for all contracts with a repayment of all or a portion of the entrance fee conditioned upon resale of the unit, to do the following:

   a) States that the provider shall make a good-faith effort to reoccupy or resell the unit; and,

   b) State the average and longest amount of time that a provider has taken to resell a unit within the last five calendar years.

6) Provides for a one-year delay in application of the requirement that, after the death of a resident, the lump sum owed, including any interest accrued, be made payable to the resident's estate projects in development prior to January 1, 2017.

7) Prohibits a provider from making any further charges to a resident or his/her estate or charges against the lump sum owed to the resident, as specified, except as otherwise obligated by an equity interest contract.

8) States that nothing in this bill shall be construed to limit or alter any legal remedies otherwise available to a resident or his/her estate.

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 the Department of Social Services (DSS). (Health and Safety Code (HSC) 1569 et seq.)

2) Provides for the licensure and regulation of Skilled Nursing Facilities (SNFs) by the Department of Public Health. (HSC 1250 et seq.)

3) 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, as specified, in exchange for an entrance fee and/or the payment of periodic charges. (HSC 1771(c)(8) and (9))

4) 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. (HSC 1771(c)(10))

5) Provides for the certification and regulation of CCRCs by DSS. (HSC 1770 et seq.)

6) Requires an applicant for a certificate of authority to operate a CCRC to obtain appropriate licenses for the entire CCRC as otherwise required by law, including RCFE and/or SNF licenses. (HSC 1771.5)

7) Requires a continuing care contract to contain numerous specified elements including, but not limited to, the duration of the contract, the list of services that will be made available to the resident as required to provide the appropriate level of care, an itemization of the services included in the monthly fee and services available for an extra charge, and others. Further requires additional information and disclosures to be attached to the continuing care contract. (HSC 1788(a), (d) through (h))

8) Establishes requirements regarding the cancellation of a continuing care contract. (HSC 1788.2)

9) Requires a lump-sum payment that is conditioned upon resale of a unit to be paid to the resident within 14 calendar days after resale of the unit. Further requires that this payment not be considered, characterized, or advertised as a refund. (HSC 1788.4(e))

FISCAL EFFECT: None.

COMMENTS:

According to the author : “Under current law, Continuing Care Retirement Community (CCRC) contracts that base the repayment of the resident’s entrance fee, also referred to as the lump-sum payment owed, upon the resale of the unit are unfair arrangements for consumers and in some cases there is little incentive to resell those units in a timely manner. In these cases the CCRC provider is able to take advantage of this type of contract, which can lead to seniors or the family members of the deceased resident experiencing significant delays in the repayment of lump-sum payment owed.

“These lump-sum payments can range from $100,000 to sometimes a million dollars, and it is often a resident’s entire “nest egg” they want to pass on. However, they did not intend to experience long delays or passing on years of waiting to their family members on the lump-sum payment owed.”

Continuing Care Retirement Communities: CCRCs offer people 60 years of age and up a long-term continuing care option that pairs their current health and resources with an individualized contract that provides community life and a range of levels-of-care. Typically this is offered in a campus-like community setting, and usually for a resident’s lifetime. Continuing care contracts typically require an individual to pay an entrance fee and monthly fees. Entrance fees can vary significantly from one community to the next and can range from $50,000 to more than $2 million. Monthly fees vary depending on the level of services included in the contract and other factors associated with location, exclusivity, and business plan variations.

Continuing care contracts are sometimes referred to by three “types”: Type A contracts (also known as life care contracts), are the most expensive and are all-inclusive agreements wherein all housing, services and healthcare are covered by the entrance fee and monthly fees; Type B contracts typically offer discounted healthcare services for limited amounts of time, after which services can be purchased; and Type C contracts can offer the lowest entrance and monthly fees, but may require residents to be responsible for paying for healthcare services at market rates.

Continuing care contracts may be refundable or non-refundable. Refundable contracts refund a portion of the entrance fees, sometimes on a scale that decreases over time. These types of contracts require a CCRC to maintain a reserve for refunds (in addition to other reserves required for the operation of a CCRC).

Many CCRC providers choose instead to offer a repayment of a designated portion of the entrance fee - a “lump-sum payment” - that is conditioned upon resale of the unit. A reserve is not required in this case, as it is assumed that the resale of the unit will result in the new resident’s entrance fee covering the cost of repaying a portion of the former resident’s entrance fee. In California, there are currently no requirements that resale and/or repayment of entrance fees take place within a certain period of time. This is the contract type which SB 939 is focused on.

As of June 2015, there were nearly 100 CCRCs in California, with the capacity to serve close to 30,000 residents. The Community Care Licensing Division of DSS oversees CCRCs by:

a) ensuring that licensing laws and regulations are followed (CCRCs are required to obtain a certificate of authority and an RCFE license; they must also obtain a SNF license through the Department of Public Health (DPH) if offering skilled nursing services), and b) reviewing and approving CCRC applications and monitoring CCRCs' financial condition and their ability to uphold their contractual obligations to residents.

Support: The sponsors of this bill, the California Continuing Care Residents Association (CALCRA), add that, "The progressive interest accrual increases the likelihood that the CCRC provider, who has entered into a repayment contract, has some incentive to work in good faith to get a resident's unit resold and to refund the senior or their estate within a reasonable time after their termination or death. Under the current law, there are no safeguards to protect against CCRC providers who may take advantage of the "conditioned up resale" contract and simply not re-sell a unit in order to delay their obligation to repay an entrance fee. For example, in Pacific Grove's Forest Manor, one family waited more than three years to receive their loved one's entrance fee refund of more than $530,000. In Carmichael, at Eskaton Village, one family member has fought to receive his deceased father's entrance fee refund since May of 2014. In this case, the father's entrance fee refund has been deducted by nearly $20,000 as Eskaton has continued to charge the estate monthly maintenance fees of over $4,000 until the unit, which is vacant, is resold."

Opposition: Erickson Living opposes the bill unless it is amended to give CCRCs greater flexibility in providing seniors a retirement housing that better suits their needs and ensures timely repayment of a portion of the entrance fee to estates.

According to American Seniors Housing Association, "This change will be extremely problematic because existing CCRCs' financial models have not been designed to support the repayment of entrance fees and accrual of interest before they are due and before funding is available to make the payments. If sales proceeds are not available when the early repayment schedule defined in this bill is triggered, funds will have to come from the community's operating funds which are generated by the monthly rents of existing residents. The intended use of these funds is to maintain the community and services for the benefit of the current residents and not for the repayment of entrance fees. This disruption to the financial assumptions underlying California CCRC operations may jeopardize their overall stability. Importantly, adding a statutory requirement to make an early refund before resale may also inadvertently create a new and excessive reserve requirement. Additionally, the 4% and 6% interest rates imposed on unpaid balances are well above most investment yields in today's market."

Previous Legislation: SB 475 (Monning) of 2015 was substantially similar to this bill and would have required prospective and future CCRC contracts which condition lump sum contract termination payments on resale of the unit to meet a series of requirements and timelines, to pay interest after a specified period of vacancy, and to meet other requirements. SB 475 was vetoed by the Governor. The Governor's veto message stated that, "While it is important that residents who buy into these communities be treated fairly, this bill would change the terms of contracts entered into by willing participants. It would also insert the department into the resolution of contract disputes."

REGISTERED SUPPORT / OPPOSITION:

Support

California Continuing Care Residents Association - Sponsor
AARP
California Advocates for Nursing Home Reform (CANHR)
California Alliance for Retired Americans (CARA)
California Commission on Aging
California Long-Term Care Ombudsman Association (CLTCOA)
Consumer Attorneys of California
Consumer Federation of California (CFC)
National Association of Social Workers-California Chapter (NASW-CA)
Office of the State Long-Term Care Ombudsman

Opposition

American Seniors Housing Association
Erickson Living – Oppose Unless Amended

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