

MARYLAND DEPARTMENT OF AGING

CONTINUING CARE

Continuing Care - What Is It?

Although the legal definition of “continuing care” is complex, in general, “continuing care” exists when all three of the following are present:

- 1) The consumer pays an entrance fee that is, at a minimum, three times the average monthly fee;
- 2) The provider furnishes or makes available shelter and health-related services to persons 60 years of age or older; and
- 3) The shelter and services are offered under a contract that lasts for a period of more than one year, usually for life.

The Maryland Department of Aging regulates the providers of continuing care. Currently there are 37 operating continuing care retirement communities in Maryland, which are known as CCRCs.

The CCRC contract is known as a continuing care agreement, and its content is regulated by the continuing care law. The continuing care agreement outlines the responsibilities of the provider and the resident with regard to continuing care. The agreements are legal contracts between the provider and that resident.

Because only a portion of the content of continuing care agreements is prescribed by the law, much of the content of continuing care agreements varies from community to community. As a result, the scope of the “continuing care” offered at different communities varies. For example, nursing care can range from full coverage in an on-site health center at no additional charge at some CCRCs, to simply priority admission to a nursing facility on a fee-for-service basis at other CCRCs.

Continuing Care - What Are the Benefits?

A CCRC may be an attractive housing and service option for a senior in the middle to upper income bracket. Seniors who choose this living arrangement do so for many reasons.

A primary reason is that the assisted living and nursing facilities at a typical CCRC offer an emotional and physical security against unknown future health care needs. In many cases, the poor health of a spouse may be the determining factor in a couple's decision to move to a CCRC. Other reasons for choosing continuing care often include freedom from heavy chores and the demands of home maintenance.

Companionship is another benefit for residents of CCRCs. Seniors who find themselves alone because of the death of a spouse or isolated as a result of the deaths of very close friends may benefit from a community setting where social activities are available and opportunities are present for making new friends and establishing close relationships with others with whom they may have a lot in common.

Many seniors choose continuing care because they want to be the planners of their remaining years and do not want to be a burden to their children or other loved ones if the time comes when they can no longer drive or maintain themselves independently. Moving to a CCRC can eliminate the need to make a major decision or move at a time of crisis, when it may be more difficult to determine the right choice.

Continuing Care - What are Some of the Financial Risks?

There is an element of financial risk inherent in choosing a CCRC because large sums of money are paid in advance for services to be provided in the future. For example, if a continuing care provider experiences bankruptcy, receivership or foreclosure, there could be a risk that residents will not receive the shelter, services and entrance fee refunds promised.

Another risk is that most continuing care agreements with refundable entrance fees require the unit to be reoccupied with payment of another entrance fee before the refund is paid. In challenging housing markets these continuing care units may not be reoccupied in a timely manner.

There are substantial differences in the financial circumstances, indebtedness and contractual obligations of different continuing care providers. Two weeks before a consumer executes a continuing care agreement, the provider is required to provide to the consumer a continuing care agreement, a continuing care disclosure statement, a copy of the written rules of the community, and a copy of the provider's latest certified financial statement. These documents can be used to help evaluate the financial position of a provider. If you are considering moving to a CCRC, the Department recommends that you consult with an attorney and/or financial advisor, who can help you to review the provider's continuing care agreement and disclosure statement.

If you are considering a CCRC that is to be built, the law does require that certain deposits be maintained in an escrow account until after construction is completed.

Continuing Care - How Has and How Is Continuing Care Changing?

The concept of continuing care grew out of life care agreements, which date back to when church-sponsored nursing homes provided lifetime care to residents who agreed to turn over all assets to the home. By the 1970's, the concept of life care changed, partly because developers found that consumers did not want to turn over all of their assets.

As a result, a new concept of continuing care was developed. Residents were asked to pay substantial entrance fees and monthly and other additional fees were charged. The entrance fee, once agreed upon, could not be changed, but all other fees could be increased according to the terms of the continuing care agreement.

There were eleven “life care” homes in Maryland in 1980 when the Maryland Continuing Care Contracts Act was enacted. The Act was written to be flexible enough to accommodate both the older “transfer of assets” structure and the newer “entrance fee” structure, which is used almost exclusively by providers today. The flexibility of the Act also allows considerable variation in the extent of the health care and other services offered by providers and in the types of payment terms offered to the consumer. As a result, many different types of service plans and payment arrangements are offered by Maryland CCRCs. See the discussion below on continuing care agreements for more detail.

As of June 30, 2012, Maryland had 37 CCRCs containing 16,336 continuing care units, of which 11,630 were independent living units, 2,210 were assisted living beds and 2,498 were nursing care beds. Entrance fees range from \$12,000 to over \$1,000,000. Monthly fees range from under \$1,000 to over \$12,000. These fees are usually based on the level of care (independent living, assisted living, or nursing), size of the apartment and the number of residents living in the apartment and, depending upon the provider, may or may not cover a wide range of services.

In short, today Maryland’s CCRCs offer consumers many more choices than when the Continuing Care Contracts Act was first enacted in 1980. There is considerable variation in the scope of the services offered by specific CCRCs, in the extent to which those services are at an additional charge, and in the refundability of entrance fees. Thus, consumers need to study the details as to what is offered by particular CCRCs in order to make informed comparisons.

Continuing Care - Who Are the Providers?

Traditionally, CCRCs have been developed, owned and operated by non-profit organizations, such as church-sponsored or fraternal organizations. Churches or church related organizations typically formed a non-profit corporation to serve as the provider, with which they may or may not have an ongoing legal relationship. However, in general, it is the provider corporation and not the church which is financially and contractually responsible. This means that if a church-sponsored CCRC experiences financial problems, the sponsoring church is not liable for financial support to the CCRC.

Although the great majority of continuing care providers in Maryland continue to be non-profit corporations, there are also a few for-profit businesses which serve as continuing care providers in Maryland. Additionally, in a number of cases, for-profit businesses are under contract to non-profit providers to develop and/or manage particular CCRCs. Maryland also has two CCRCs whose legal structures include cooperative housing corporations.

Continuing Care - What Is the Law?

Continuing care legislation in Maryland was first enacted in 1980. At that time, only four other states had continuing care laws. Today most states have legislation which ranges from minimal disclosure to much stricter regulation.

Since the Maryland law was first enacted in 1980, various amendments to the law

have increased the regulatory responsibilities of the Maryland Department of Aging. However, lawmakers and the Department find a tension between the desire to protect the senior consumer and the desire to not enact laws that are so costly that relatively few seniors would be able to consider continuing care as an option. Lawmakers and the Department also find tensions between trying to protect the interests of each individual resident, the interests of the existing residents as a group, and the interests of prospective residents.

The principal continuing care laws are located at Title 10, Subtitle 4, of the Human Services Article (“HSA”), Annotated Code of Maryland, and Code of Maryland Regulations (COMAR) 32.02.01.

Continuing Care - Who Is the Regulator?

The Maryland Department of Aging is the agency charged with administering the continuing care laws. The authority given to the Department of Aging under the continuing care law is limited. The State of Maryland does not endorse or guarantee any continuing care community. Approval of feasibility studies according to HSA §10-409(d) for new communities, or new units, means that the Department has determined that a market for the facility appears to exist and that a reasonable financial plan has been developed for developing and operating the project. The Department does review annually the audited financial statement, disclosure statement, and marketing of each CCRC.

The Department of Aging does not have the authority to set fees or limit fee increases. Fees are determined by the provider or other entity providing the services and are affected by the marketplace. Increases in operating costs, especially the cost of health care, and low occupancy levels are two major factors which can influence fee increases.

Continuing Care - What is a Continuing Care Agreement?

The rights and responsibilities of residents and providers are stated in continuing care agreements. These agreements are lengthy and complicated documents, and all consumers are advised by the Department to consult with an attorney and a suitable financial adviser before signing any documents.

A continuing care agreement is a legally binding contract between the provider and the subscriber (the resident), which typically remains in place until the subscriber leaves the community or is deceased. Continuing care agreements are reviewed by the Department of Aging for compliance with certain statutory and regulatory requirements.

As discussed in the next two sections, continuing care agreements are generally classified according to two basic criteria: (1) contractual entrance fee refund policies; and (2) the amount of assisted living and nursing home services provided without an increase in the monthly fee.

Continuing Care Agreements – To What Extent Is the Entrance Fee Refundable?

The law requires that the entrance fee be refunded if a continuing care agreement is terminated before the date of occupancy. A provider may only terminate a resident’s agreement after the occupancy date if the provider has “just cause.” If a provider does

terminate an agreement for just cause, it is required to refund a pro rated portion of the entrance fee to the resident.

If a resident terminates the agreement after the occupancy date, providers are not required by law to make any refund of the entrance fee. However, almost all continuing care agreements provide for some type of refund, at least for some period of time, where the resident terminates the agreement after occupancy. These kinds of refunds, which are not required by the continuing care law, but which providers agree to provide in their continuing care agreements, are called contractual entrance fee refunds.

Although particular agreements may contain variations, contractual entrance fee refunds are usually calculated on a percentage basis or declining balance basis. The percentage basis is the easiest to understand. A typical agreement providing a percentage basis will say that the resident receives a refund of x % of the entrance fee upon termination by the resident. Different communities provide different percentages; some as low as 25%, others as high as 100%.¹

A continuing care agreement that provides a declining balance contractual entrance fee refund generally starts out as a 100% refund that declines over time to zero percent. For example, a declining balance refund might decline 20% per year. If so, a resident would only receive an 80% entrance fee refund if the resident terminated the agreement at the end of one year; 60% at the end of two years; 40% at the end of three years, and so on until the refund amount would be zero percent after the end of year five.

All other things being equal, a percentage basis contractual refund agreement will generally require a larger entrance fee and/or monthly fees than a declining balance agreement. However, under a declining balance contractual refund agreement, the resident might not receive any refund when terminating the agreement.

It is important to note that the majority of all providers, regardless of whether they use a percentage basis or declining basis contractual refund, make the refund contingent on the resale of the unit, i.e., the receipt of a new entrance fee for the unit from a new resident.

Continuing Care Agreements – How Are Residents Charged for Assisted Living and Nursing Care?

The major health related services provided under a continuing care agreement are usually assisted living services and nursing home services. Although particular agreements may contain variations, how communities charge monthly fees² for these

¹ There are few, if any, true 100% refundable entrance fee agreements in Maryland at the present time. For example, many CCRC agreements include provisions charging certain refurbishment fees against the refund. Thus, a resident may get close to 100% back, but not a full refund.

² Note that, in addition to the regular monthly fees discussed in this section, communities may also charge additional fees that are due on a monthly basis, such as for ancillary services.

services can generally be classified in one of three categories: (1) a fee-for-service agreement (sometimes called a Type C agreement), (2) an extensive agreement (sometimes called a Type A agreement), or (3) a modified agreement (sometimes called a Type B agreement).

First, in a fee-for-service agreement, a resident has to pay whatever the monthly fee³ for assisted living or nursing home care is when the resident needs those services. It will be higher than the monthly fee to stay in an independent living unit. For example, in a fee-for-service community a resident's monthly fee might be \$2,500 per month in an independent living unit, but \$6,000 per month in an assisted living unit, and \$9,000 per month if in nursing care. All of these monthly fees are subject to increase from time to time.

Second, under an extensive agreement model, although monthly fees are subject to increase from time to time on a community wide basis, an individual resident's monthly fee does not increase because the resident moves to the assisted living or the nursing home portion of the community. For example, in an extensive agreement community the monthly fee might be \$3,750 per month regardless of whether the resident is in independent living, assisted living, or the nursing home portion of the community. Thus, an extensive agreement acts somewhat like a long-term care insurance policy.⁴

The third category or classification – the modified agreement – is a hybrid of a fee-for-service and extensive agreement. A modified agreement acts as an extensive agreement, but only for a limited time. In other words, under a modified agreement a resident would typically be provided assisted living care or nursing care without an increase in the monthly fee for a limited number of days. For example, if the limited number of days under the modified agreement was 100, a resident could receive 100 days of nursing home care or assisted living care without paying a higher monthly fee than that applicable to the resident's former independent living apartment - basically an extensive agreement, but only for 100 days. If the resident needs more than 100 days of such care, the resident then has to pay on a fee-for-service basis. The resident's monthly fee will undoubtedly go up then because fee-for-service assisted living rates and nursing home rates are almost invariably higher than monthly fees for independent living.

Generally, all other things being equal, a fee-for-service agreement will have lower entrance fees and/or monthly fees initially than an extensive care agreement. This is because the extensive agreement provides benefits somewhat like a long term care insurance policy. It is difficult, if not impossible, to predict which will be a better bargain for a particular consumer over the long run. If a resident needs little if any assisted living or nursing care, then generally a fee-for-service contract would be the better deal. On the

³ Technically, nursing home fees are generally charged on a per diem rather than monthly basis under fee-for-service agreements.

⁴ The Department recommends that consumers with existing long term care insurance policies who are considering entering into extensive agreements first consult with their insurance provider and the CCRC to make sure that the benefits under the long term care insurance policy and the continuing care agreement are properly coordinated for the consumer's benefit.

On the other hand, if a resident needs a lot of care in assisted living or the nursing center during the course of the agreement, an extensive agreement could be the better bargain.

Continuing Care – What Are Some Additional Important Consumer Issues?

All communities in Maryland typically increase monthly fees at least once a year. Provisions governing future fee increases appear in the continuing care agreement. Information on prior fee increases must appear in the continuing care disclosure statement.

Fees collected under continuing care agreements may not be used for purposes other than those set forth in the continuing care agreement. Some agreements limit the purposes for which such fees may be used to purposes related to the particular community. Other agreements allow fees to be used for broader purposes that extend beyond the community, such as furthering the provider's mission of providing services to the elderly. Effective October 1, 2012, each continuing care agreement is required to state whether the fees may only be used in the particular community or may be used outside the community.

Many continuing care agreements of nonprofit providers state essentially that it is the policy of the provider not to terminate a resident's agreement if the resident is unable to make payments due to unexpected financial adversity beyond the control of the resident. However, the agreements usually go on to state that subsidies from the provider will be provided only as long as the general financial well being of the provider is not at risk.

To assist consumers and their advisors in assessing the financial well-being of a provider, the law requires that the consumer be given a copy of the provider's most recent certified financial statement at least two weeks before signing the continuing care agreement. The law also requires the provider to furnish to the consumer a disclosure statement disclosing certain financial and other information before the consumer signs the continuing care agreement.

Continuing Care - Summary

Continuing care is one form of housing and services for the elderly not only in Maryland but nationwide. While other options, such as rental apartments, may be less costly to the consumer, they generally do not offer the on-site assisted living, nursing care and other amenities that CCRCs typically provide.

A contributing factor to the growth of the continuing care industry in Maryland has been the Maryland Continuing Care Contracts Act, which governs CCRCs. However, changes in the preferences of consumers and in the continuing care industry will likely continue to lead to amendments to the continuing care laws, so that the concept of continuing care can continue to change with the times and continue to offer a viable option of housing and services for senior consumers.

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