

Aging Services of Georgia
CCRC Public Policy

Introduction

As most Continuing Care Retirement Communities (CCRC) members of Aging Services of Georgia are aware, the association has been focusing energy on updating the regulation of CCRCs in order to ensure both quality of care for CCRC residents and to create a legal framework and an atmosphere conducive to facilitating the development of CCRCs as a viable option in the continuum of care available to seniors in Georgia. Over the past several years, we have made a lot of progress that both support our CCRC members through less regulatory burden and save CCRC members significant dollars.

As you know, Georgia had been slow in the development of CCRCs due to the challenge of obtaining nursing home beds. Since the late 90's when "sheltered beds" became an option for CCRCs, the number of CCRC has grown in Georgia.

Provider Fees (taxes) for Nursing Home Beds

After advocating for and securing sheltered beds, we did not have a lot of action related to CCRCs for several years. When legislation was developed in 2003 for provider fees (taxes) for nursing homes beds, Aging Services had just contracted with Tom Bauer as our Legislative Counsel. We immediately set up a meeting with Representative Mickey Channel who sponsored the legislation (HB 526).

Both a Medicaid (NH) and private pay (CCRC) association member participated in the meeting to explain that there were providers in Georgia that would be significantly harmed by the legislation: Nursing homes that do not participate in Medicaid (mostly our CCRCs) would be have had to pay the fees and not receive any funds back after the federal match came to the state. We learned through AAHSA about the availability of a waiver through CMS.

States were learning how to use the complicated waiver, and CMS was slow to approve them for any state. After our meetings, Rep. Channel agreed to add language to HB 526 requiring the state to apply for a waiver. The first year, with all the confusion regarding states applying for waivers, we were not able to use the waiver in Georgia. Immediately, we began working on the waiver for the next year and in due time, the Georgia waiver was approved by CMS.

With more understanding of how to present the waiver, we were able to develop language which exempted our CCRCs and many of our large Medicaid nursing homes throughout the state. This significantly helped our large nursing homes with their cash flow. We estimate that this exemption saves our CCRC members about \$1.5 million dollars each year.

Regulation of CCRCs (Certificates of Need)

By 2006 it was clear that the development and operation of CCRCs in Georgia were being hampered by the state's antiquated regulatory structure, one which involved three different state agencies having some oversight of CCRCs. At about the same time, economic research at Georgia Tech was published indicating both that Georgia lacks sufficient residential options for Georgia's burgeoning senior population and that state law and regulations discouraged the development of CCRCs in Georgia.

In 2006 Aging Services undertook two specific actions regarding CCRCs. First, we contracted with Mike Harris of Cornerstone Senior Living to conduct a study/review of CCRC regulation in other states. Second, we began attending and monitoring the work of the State Commission on the Efficacy of the CON Process in Georgia. We provided testimony for the Commission.

Due to the unnecessary, expensive burden for providers, we recommended the elimination of Certificates of Need for CCRCs in Georgia. In case that goal was not achieved, Aging Services recommended several changes, including the following, to the Commission:

- Direct Admission into Nursing Home component of the CCRC for 7-9 years;
- Flexibility in the 1:5 Ratio of Nursing Home Beds to Independent Living Units;
- Extension of the Date for Beginning of Construction to 36 Months;
- Flexibility in the 1% Indigent Care Requirement, perhaps with Community Outreach.

Ultimately the Commission recommended maintaining the existing CON regulations of Skilled Nursing Facilities, but deregulating (with regard to CONs), CCRCs as long as the nursing beds remain sheltered. These recommendations were included in comprehensive CON legislation introduced in 2007-2008. They obviously addressed some of Aging Services' requests, but not the key one on "direct admissions."

There were many issues dealing with CONs in the legislation. Although at first, there was supposed to be two pieces of legislation (one for CON issues that were not controversial and another for the more controversial ones), all issues were eventually addressed in an "omnibus" CON introduced at the behest of Governor Perdue. Aging Services worked closely with Rep. Sharon Cooper (chair, House Special CON Committee) to provide for some degree of "direct admissions" to CCRCs. Although we developed SB 539, introduced by Senator Don Thomas, ultimately the CCRC issue was contained in SB 433, the comprehensive CON legislation which passed.

SB 433 authorized a new process under which CCRC nursing homes can admit patients directly from the community on a phased basis. In the first year of the CCRC's existence it could use 50% of its beds for direct admissions, and this percentage would decrease by 10% each year thereafter. In addition, after some negotiation with the Department of Community Health (the agency which regulates CONs) concerning the effective date of SB 433 and the possibility of introducing new legislation to change that date, "existing" CCRCs may use the phase-in process for direct admissions.

CCRC Regulation (Department of Insurance)

Simultaneously with addressing CCRC-CON issues, Aging Services began meeting with the Department of Insurance (DOI) to discuss the updating of regulation of CCRCs in Georgia. DOI was aware that current Georgia law was antiquated and asked if we could develop new language. Since this was such an unusual opportunity, we agreed and began meetings with members, working with Steve Maag, Continuing Care Director at AAHSA and our colleagues in other states.

The Georgia CCRC law has not been significantly amended since its original enactment. Since that time other states have both allowed more flexibility under CCRC laws to providers to adjust services to those demanded by the market and given more options to the state in regulating CCRCs. For example with regard to protecting the resident's investment, the requirement to post a bond no less than \$10,000 is not only the lone statutory option used to assure financial protection to CCRC prospective residents and residents, Most states now utilize operating reserves and/or escrow accounts.

Also, while the Georgia law requires that an extensive amount of financial information be provided to residents, this information is contained in an annual report which may not be available until well after the resident moves into the CCRC. By contrast other states require the disclosure of information at or before the time of contracting. Also, other states require the disclosure of background information of the owners and operators of the continuing care retirement community, including experience in providing senior services, past business background, and criminal background information.

As a result, Aging Services developed HB 843 (introduced by Rep. Mike Jacobs, a member of the House Insurance Committee), at the end of the 2009 General Assembly. The purpose of introducing the bill this year is to generate extensive discussion of HB 843 prior to the 2010 General Assembly in order to enhance its chances of passage. The intent of the bill is to significantly and comprehensively update the legislation for licensure of CCRCs in Georgia.

Aging Services is currently refining HB 843. We hope to clean up the language and begin meetings with various stakeholders this fall. We have been discussing CCRC regulation with its CCRC members for over three years. We have paid special attention to language that supports both not-for-profit and for-profit CCRC providers in Georgia. The main changes proposed in HB 843 are:

- Changing the definition of “continuing care” to require that skilled nursing is a component of such care;
- Allowing those currently licensed providers that provide assisted living but not skilled nursing to call themselves CCRCs;
- Expanding the disclosure of details to prospective residents; and
- Requiring escrow accounts or operating reserves (in lieu of a bond) to ensure the financial viability of the provider.