REPORT OF THE
SECRETARY OF HEALTH AND HUMAN RESOURCES ON

The Feasibility and Desirability of Creating A Continuing Care Advisory Council

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 57

COMMONWEALTH OF VIRGINIA
RICHMOND
1993

COMMONWEALTH of VIRGINIA

Howard M. Cullum
Secretary of Health and Human Resources

Office of the Governor
Richmond 23219

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January 1993

The Honorable James F. Almand
2060 North 14th Street
Suite 206
Arlington, Virginia 22201

Dear Jim:

We thank you for your continued interest in continuing care retirement communities. Enclosed is our study of the feasibility and desirability of creating a continuing care advisory council.

In Virginia, thirty-nine continuing care retirement communities (CCRCs) serve more than 8500 residents. It is anticipated that the continuing care retirement community is an option that more people will choose. In the enclosed report, we have provided information on this important component of our long-term care system. We have also recommended there exist in state government a mechanism for monitoring and acting on emerging trends related to CCRCs and similar residential facilities.

We welcome any questions you may have about the report and look forward to continuing to work with you to further the development of a quality long-term care system in Virginia.

Sincerely,

Howard M. Cullum

HMC/me

Enclosure

REPORT OF THE SECRETARY OF HEALTH AND HUMAN RESOURCES ON THE FEASIBILITY AND DESIRABILITY OF CREATING A CONTINUING CARE ADVISORY COUNCIL

PREFACE

House Joint Resolution No. 169, passed by the 1992 General Assembly, requested the Secretary of Health and Human Resources "study the feasibility and desirability of creating a continuing care advisory council." An advisory group was convened to assist in preparing a response to this request. We wish to thank and recognize the group members, all of whom volunteered their time, expertise and support to this effort.

Nancy M. Ambler, Virginia Housing Study Commission
Rex Beckwith, Westminster-Canterbury of Rappahannock
Audrey Butler, Virginia Department of Health
Hunsdon Cary, III, Westminster-Canterbury of Lynchburg
Faye Cates, Virginia Department for the Aging
Sam Clement, Virginia Health Care Association
Colonel Harold Colen, Consumer Representative and CCRC Resident, The Fairfax
Irene Comp, Consumer Representative and CCRC Resident, Washington House
Ed Dalton, Virginia Health Services Cost Review Council
Joy Duke, Virginia Department of Social Services
Dr. Arthur Flemming, Consumer Representative and CCRC Resident, Washington House
Victor Gauthier, Consumer Representative and CCRC Resident, Goodwin House-West
Robert F. Haas, American Association of Retired Persons
Pat Kawana, Westminister-Canterbury House
James F. Kelly, Virginia Housing Development Authority
Ruth Kernodle, Governor's Advisory Board on Aging
Sandra Levin, Virginia Association of Nonprofit Homes for the Aging
Coleen Mallon, Washington House
James Meharg, Goodwin House
Michael R. Osorio, Virginia Association of Homes for Adults, Inc.
Robert Dean Pope, Hunton and Williams
Charles Sabatino, American Bar Association, Commission on Legal Problems of the Elderly
Gina Simpson, Long-Term Care Ombudsman Program Advisory Council
Laura Lee Viergever, Bureau of Insurance, State Corporation Commission
Gordon Walker, Virginia Association of Area Agencies on Aging
J. Michael Wright, Virginia Department of Agriculture and Consumer Services
Dantes York, Consumer Representative and CCRC Resident, Goodwin House-West

Chairman: **Deputy Secretary B. Norris Vassar**, Office of the Secretary of Health and Human Resources
Lead Agency: Virginia Department for the Aging, **Thelma E. Bland, Commissioner**
Staff: **Catherine P. Saunders**, Virginia Department for the Aging

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TABLE OF CONTENTS

REPORT OF THE SECRETARY OF HEALTH AND HUMAN RESOURCES ON THE FEASIBILITY AND DESIRABILITY OF CREATING A CONTINUING CARE ADVISORY COUNCIL

EXECUTIVE SUMMARY

House Joint Resolution No. 169, passed by the 1992 General Assembly, requested the Secretary of Health and Human Resources to "study the feasibility and desirability of creating a continuing care advisory council." Continuing care retirement communities are the "fastest growing segment of the senior citizens housing market" (Consumer Reports, February 1990). In Virginia, thirty-nine continuing care retirement communities (CCRCs) serve more than 8500 residents. As the number of older persons continues to increase, both in numbers and as a percent of the total population, it is anticipated that the continuing care retirement community is an option that more people will choose.

Virginia is one of thirty states which, to some extent, regulate CCRCs. Virginia's Continuing Care Provider Registration and Disclosure Act (Code of Virginia) 38.2-4900 et seq.) defines a continuing care retirement community as a place in which a person undertakes to provide continuing care to an individual. Continuing care is defined as "providing or committing to provide board, lodging and nursing services to an individual... (i) pursuant to an agreement effective for the life of an individual or for a period in excess of one year ... and (ii) in consideration of the payment of an entrance fee." The State Corporation Commission is the primary mechanism for enforcing CCRC regulatory requirements governing financial stability, protection of consumers from unsound decisions, financial disclosure and content of resident contracts. In addition, continuing care retirement communities must also meet the Commonwealth's regulations which govern the levels of long-term care they provide. For example, the Department of Health licenses the nursing home component of the communities and the Department of Social Services licenses the homes for adults component.

In 1991, the Virginia Department for the Aging was requested by the Virginia General Assembly, through HJR 372, to conduct a review of consumer protection provisions for residents of continuing care facilities. The Department offered seven recommendations to improve consumer protection for residents of continuing care retirement communities. One of the recommendations was for a study of the possible creation of a state level continuing care committee. This led to the introduction of HJR 169 requesting the Secretary of Health of Human Resources to study the feasibility and desirability of creating a continuing care advisory council.

To assist in completing this study, an advisory group was

convened. The group included continuing care residents and providers, their advocates and state and local agencies which regulate or interact with continuing care retirement communities. The group reviewed the roles of responsibilities of the Long-Term Care Ombudsman Program and Long-Term Care Council as they relate to continuing care retirement communities. The Long-Term Care Ombudsman Program, operated by the Virginia Department for the Aging, serves as a focal point for complaints made by or on behalf of consumers of long-term care services. The program investigates and seeks to resolve the complaints. In addition, a major component of the program is consumer education, including educating consumers of long-term care services about their rights, and how to advocate on their own. The Ombudsman also works to identify issues and concerns impacting older persons, and recommends changes in the long-term care system which will benefit these individuals as a group.

The legal base for Virginia's Long-Term Care Council is included as Appendix D of this report. The Council has been charged by the Virginia General Assembly with the responsibility of recommending standards, policies and guidelines for the development and implementation of a continuum of statewide long-term care services.

The study group also reviewed the statutes from the states which have continuing care advisory councils. The model statutes proposed by the American Association of Homes for Homes for Aged and the Columbia Law School were also reviewed.

The study advisory group concluded that a mechanism with the ability to monitor and act on emerging trends related to CCRCs and other retirement communities was warranted. For example, the definition of a CCRC is blurring as more communities offer a "continuum of care" rather than "continuing care." This distinction can have enormous financial consequences for consumers. Thus, a forum for ongoing review of resident and provider concerns is suggested. This suggested "environmental scanning device" could funnel questions from the public and from policymakers and develop recommended public policies regarding CCRCs, CCRC "look-alikes" and other residential type facilities offering long-term care. Members of the group, for example, expressed concerns about consumer misunderstanding about facilities offering services similar to CCRCs but not meeting the legal definition of a "continuing care provider" and therefore not being subject to regulation under the Continuing Care Provider Registration and Disclosure Act.

A mechanism for monitoring and acting on emerging trends related to CCRCs and similar residential facilities is therefore recommended. The structure, functions and scope of responsibility of such an advisory body were identified by the study group and are included in this report. It is further recommended that the proposed functions of any continuing care advisory body be assigned to the Long-Term Care Council or incorporated in any planning for the restructuring of the state's long-term care services, as recently proposed by the Joint Commission on Health Care.

REPORT OF THE SECRETARY OF HEALTH AND HUMAN RESOURCES ON THE FEASIBILITY AND DESIRABILITY OF CREATING A CONTINUING CARE ADVISORY COUNCIL

INTRODUCTION

House Joint Resolution NO. 169, passed by the 1992 General Assembly, requested the Secretary of Health and Human Resources to "study the feasibility and desirability of creating a continuing care advisory council." The resolution was introduced in response to a study completed by the Virginia Department for the Aging on the adequacy of consumer protection for residents of continuing care facilities. The Department recommended the creation of a state level continuing care committee be studied.

Continuing care retirement communities are the "fastest-growing segment of the senior citizens housing market. "[1] In 1990, there were approximately 800 continuing care retirement communities (CCRCs) across the country serving more than 230,000 residents. By the year 2020, it is estimated continuing care retirement communities will be housing 18.25% of those 75 years of age and over. "[2] Projections also indicate that there might be as many as 1500 CCRCs serving 450,000 residents by the year 2000. CCRCs may also be affordable for as many as 50% of the elderly.[3]

In Virginia, thirty-nine continuing care retirement communities currently serve more than 8500 residents. This is a 40% increase in the number of such facilities since 1985 when it became a requirement of continuing care retirement communities in Virginia to register with the State Corporation Commission.

Coupled with the growth in the number of continuing care retirement communities has been a tremendous growth in the numbers of elderly persons. These trends will continue at an even greater rate. By the year 2000, persons age 75 and over will number 17.3 million, a 46% increase from 1985. In Virginia, by the year 2000, it is estimated there will be more than 345,000 persons age 75 and over. Currently, persons sixty-five and over comprise more than 12% of Virginia's population. Between 1990 and 2000 the elderly population will increase 15.8% Between 1990 and 2010 persons age 85 and over will increase 110%.

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[1] Communities for the Elderly," Consumer Reports, February 1990.

[2] Rivlin and Weiner, "Caring for the Disabled Elderly: Who will Pay?" Bookings Institute, 1988.

[3] Traskas, "Lifecare Undergoing Changes," Hospitals, 1988.

As the number of older persons continues to increase, both in number and as a percent of the total population, it is anticipated that the continuing care retirement community is an option that more people will choose. Continuing care retirement communities offer a continuum of care which provides a suitable living arrangement for many older people, and an attractive and affordable alternative for many people as they plan their retirement. Continuing care retirement communities provide for the coordination of health care, social, educational and cultural opportunities, and a social support system which helps older people maintain their health, independence and quality of life while aging in place. CCRCs also offer older persons the opportunity to preserve their assets, fund their own health care and thereby reduce the need for public assistance.

The question of how to finance and deliver long-term care to its increasing number of older persons is an important issue for the Commonwealth and for the nation. One approach is to encourage the responsible growth of CCRCs as a retirement living alternative.

Originally sponsored by church and not-for-profit organizations, CCRCs are now considered to be an investment opportunity by a variety of for-profit corporations and individuals. Typically, the continuing care resident pays an entrance fee plus an additional monthly fee for services received. In Virginia, the entrance fee can range from $12,500 to $313,000. The average entrance fee ranges from $63,000 to $143,000. ("Continuing Care Retirement Communities," House Document No. 46, Virginia General Assembly, 1992.)

Virginia is one of thirty states which, to some extent, regulate continuing care retirement communities. Virginia's Continuing Care Provider Registration and Disclosure Act (Code of Virginia 38.2-4900 et seq.) defines a continuing care retirement community as a place in which a person undertakes to provide continuing care to an individual. Continuing care is defined as "providing or committing to provide board, lodging and nursing services to an individual... (i) pursuant to an agreement effective for the life of the individual or for a period in excess of one year..., and (ii) in consideration of the payment of an entrance fee." (A list of registered providers is available upon request to the State Corporation Commission Bureau of Insurance, P. O. Box 1157, Richmond, Virginia 23209 or telephone (804) 786-3636.)

The State Corporation Commission is the primary mechanism for enforcing CCRC regulatory requirements governing financial stability, protection of consumers from unsound decisions, financial disclosure and content of resident contracts. In addition, continuing care retirement communities must also meet the Commonwealth's regulations which govern the levels of long-term care they provide. For example, the Department of Health licenses the nursing home component of the communities and the Department of

Social Services licenses the homes for adults component.

In 1991, the Virginia Department for the Aging was requested by the Virginia General Assembly to conduct a review of consumer protection provisions for residents of continuing care facilities. Specifically, HJR 372 requested a study of the Commonwealth's laws and regulations regarding consumer protection provisions for residents of continuing care facilities to determine if additional authority was needed to protect the rights and welfare of residents of such facilities. The Department offered seven recommendations to improve consumer protection for residents of continuing care retirement communities. Two were addressed through the introduction of HB 760 of the 1992 Virginia General Assembly. With the passage of HB 760, disclosure statements must now contain information on how CCRC residents will handle complaints. Also, no retaliatory conduct is permitted against any resident for filing complaints. The Department's recommendations also led to the passage of HJR 169 requesting this study of the feasibility and desirability of creating a continuing care advisory council. Appendix B lists the seven recommendations included in the Department for the Aging's report. The four remaining recommendations have also been acted on by the parties referenced in each of the recommendations. (A copy of HJR 169 is included as Appendix A.)

THE FEASIBILITY AND DESIRABILITY OF CREATING A CONTINUING CARE ADVISORY COUNCIL

To assist in completing this study of the feasibility and desirability of creating a continuing care advisory council, an advisory group was convened. The group included continuing care residents and providers, consumer advocates, and state and local agencies which regulate or interact with continuing care retirement communities. (The membership of the group is included in the Preface of this report.) The group's discussions focused on the following questions:

- Is an advisory council desired or needed?
- Is creating an advisory council practicable and suitable?
- What should be the intent or purpose of an advisory council?
- What need(s) would it fulfill? What issue(s) should it address?
- Are there other means to address the issues which are suggested come before the advisory council?

Prior to considering these specific questions, the group reviewed the Department for the Aging's 1992 study report of retirement communities, House Document No. 46. (A copy is available upon request to the Virginia Department for the Aging, 700 East Franklin Street, 10th Floor, Richmond Virginia 23219, or

telephone (804) 225-2271.) The roles and responsibilities of Virginia's Long-Term Care Ombudsman Program as they relate to the handling of inquiries and complaints about continuing care retirement communities were also reviewed.

The Long-Term Care Ombudsman Program is operated by the Virginia Department for the Aging. The program's mission is to serve as an advocate for older long-term care consumers. Originally established in 1979 as a requirement of the federal Older Americans Act, the program serves as a focal point whereby complaints made by or on behalf of older persons in long-term care facilities, or those receiving long-term care services in the community, can be received, investigated, and resolved. In addition, a major component of the program is consumer education, including educating consumers of long-term care services about their rights, and how to advocate on their own. The Ombudsman also works to identify issues and concerns impacting older persons, and recommends changes in the long-term care system which will benefit these individuals as a group.

One of the recommendations from the Department for the Aging's recent study on continuing care retirement communities was that the State Long-Term Care Ombudsman Program publish consumer information for prospective continuing care retirement community residents. The Ombudsman Program intends to revise the Consumer's Guide to Long-Term Care in Virginia in the spring of 1993. As part of that revision, the section on continuing care retirement communities will be expanded. The study also recommended that the Office of the State Long-Term Care Ombudsman establish and operate a clearinghouse for complaints about continuing care retirement communities. The Ombudsman Program continues to handle complaints regarding CCRCs, and acts as a clearinghouse for those complaints, providing information to the public and coordinating activities with the regulatory agencies.

The group also reviewed the statutes from the states which have continuing care advisory councils. The model statutes proposed by the American Association of Homes for the Aged and the Columbia Law School were also reviewed. The findings of a review of continuing care advisory boards nationwide were also considered. It was noted that, "an advisory board can be used to increase interdepartmental cooperation or provide a source of extradepartmental expertise, but only 10 of the (22) responding states have established such boards. One-half of these reported, that they only 'occasionally' seek board input".[4] Major provisions of these statutes are included as Appendix C of this report.

At the first of two meetings the study advisory group,

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[4] Sterns, Netting, Wilson & Branch, "Lessons from the Implementation of CCRC Regulation," The Gerontologist, 1990.

concluded that creating an advisory council for continuing care retirement communities was not warranted. However, a mechanism with the ability to monitor and act on emerging trends related to CCRCs and other retirement communities was recommended. Consideration was given to the Long-Term Care Ombudsman Program Advisory Council, the Long-Term Care Council, or another existing group being charged with this responsibility. The Long-Term Care Ombudsman Program Advisory Council, for example, provides consultation to the Virginia Department for the Aging in the administration and delivery of the services of the Ombudsman Program. In addition, the Council serves to encourage consumer involvement in long-term care advocacy and to promote public policies which protect consumers of long-term care services. This twenty-one member Council is composed of representatives of the various state and local, public and private agencies which interact with the Ombudsman Program, and provider groups and consumers.

The Long-Term Care Council, established in 1982, is responsible for recommending standards, policies and guidelines for the development and implementation of a continuum of statewide long-term care services. The membership of the Council includes the Secretary of Health and Human Resources and the heads of nine state agencies within the Secretariat, all involved in the provision of long-term care services in the Commonwealth. The legal base for the Council is included as Appendix D of this report. The legal base contains a number of duties which have been assigned to the Council, the majority of which are related, in some degree, to CCRCs and the issues identified by this study advisory group.

In summary, the group asked, should there exist in state government an entity which has responsibility for monitoring the development of CCRCs and other related residential facilities and which also is in a position to take action on any problems which may surface? For example, the definition of a CCRC is blurring as more communities offer a "continuum of care" rather than "continuing care." This distinction can have enormous financial consequences for consumers. A growing variety of contract options and choices of housing, services and amenities, coupled with the wide range of fees, may lead to misunderstanding for the consumers, providers and payors. Thus, a forum for ongoing review of resident and provider concerns is suggested. This suggested "environmental scanning device" could funnel questions from the public and from policymakers and serve to develop public policies regarding CCRCs, CCRC "look-alikes" and other residential type facilities offering long-term care. Members of the group, for example, expressed concerns about consumer misunderstanding about facilities offering services similar to CCRCs but not meeting the legal definition of a "continuing care provider" and therefore not being subject to regulation under the Continuing Care Provider Registration and Disclosure Act.

In light of the public's interest in streamlining government and the discussions underway on the consolidation of long-term care at the state level, the study advisory group recommended this issue of needed oversight be considered by the SJR 115 study committee. The CCRC study committee would then meet after the SJR 115 committee had had time to consider this issue.

SJR 115, introduced during the 1992 Session of the Virginia General Assembly, requested the Secretary of Health and Human Resources to streamline the planning, administration and operation of health care and long-term care related boards and agencies within the Secretariat. The resolution recognized that "fragmentation of the administration and financing of long-term care community-based programs and long-term care institutional programs serving the elderly at the state level makes it difficult to develop a comprehensive long-term care system" and further, "a consolidation of Boards' and agencies' activities and authority could effect a far more efficient, effective and coordinated management mechanism for health care in the Commonwealth". In response to SJR 115, an extensive review of Virginia's activities relative to long-term care was conducted.

The study for SJR 115 was completed at the same time this study of the need for a continuing care advisory council was being completed. The Secretary of Health and Human Resources presented his recommendations to the Joint Commission on Health Care. One recommendation, which relates directly to this study, is the proposal to restructure and consolidate all aging and long-term care planning, financing and service programs administered by the Department of Medical Assistance Services, the Department of Social Services, the Department for the Aging and the Department of Health. The future role of the Long-Term Care Council is one aspect of the proposal. To address this, the Secretary of Health and Human Resources would appoint a task force composed of all major stakeholders, including representatives of the appropriate state agencies, local health and social service agencies, area agencies on aging, appropriate consumer and advocacy groups and provider representatives. The task force would develop an implementation plan to restructure and consolidate state management of long-term care services. Such a plan would be presented to the Joint Commission on Health Care on October 1, 1993. The Joint Commission on Health Care has since incorporated the Secretary's proposal in its recently released report and recommendations. The Joint Commission has also recommended the Long-Term Care Council be continued for another year to enable this body to assist the Secretary with the restructure of the long-term care system.

When the advisory group for this study held its second and final meeting, the Secretary of Health & Human Resources's recommendation had not yet been submitted to the Joint Commission. The group was advised, however, of the Secretary's intent to submit a proposal which might lead to the formation of a single state

agency to deal with long-term care. Further, if such an agency were formed, its responsibilities would include the issues identified by the continuing care advisory council study group. Given the possibility of this major change in the structure of state government relative to long-term care, it was suggested it might be premature and futile for the study group to recommend the formation of a permanent continuing care advisory body. The study group concluded that a continuing care advisory body, whether a component of an existing entity or incorporated in any new state level organization, is warranted. Rather than specifically naming which approach might be best, the group outlined the elements which they believed should be incorporated in any advisory body on CCRCs.

RECOMMENDATION

A mechanism for monitoring and acting on emerging trends related to CCRCs and similar residential facilities is recommended. It is further recommended that the proposed functions of a continuing care advisory body be assigned to the Long-Term Care Council or incorporated in any planning for the restructuring of the state's long-term care services and the creation of a single state agency on long-term care, as recently proposed by the Joint Commission on Health Care.

In addition, the structure, functions and scope of responsibility of any advisory body on continuing care retirement communities are also recommended. These elements, as recommended by the continuing care retirement communities study advisory group, are as follows:

A. Structure:

- To include a balanced mix of providers and residents of continuing care retirement communities and representatives of the state departments of Aging, Health and Social Services and a representative of the State Corporation Commission's Bureau of Insurance.

- Additional members might include 1) representatives of other state agencies, such as those whose responsibilities include housing and consumer affairs, 2) a CPA, attorney and investment banker with experience in continuing care, and 3) members of the Virginia General Assembly.

It is also recommended that the process for the proposed advisory body to conduct its work include:

- meeting in open session, at least twice yearly, in locations around the state, and

- preparing an annual report to the Virginia General Assembly which includes recommendations.

B. Functions:

- to serve in an advisory capacity to the executive and legislative branches of state government; (not to be rule-making or adjudicatory);

- to provide a forum for ongoing review of resident and provider concerns;

- to recommend and review rules, policies and legislation; and

- to serve as a resource for the executive and legislative branches of state government.

For example, the advisory body might develop recommended changes in the current continuing care retirement communities statute or propose a method for regulating continuing care hybrids. The group might also function to identify issues requiring the attention of the State Corporation Commission Bureau of Insurance and serve to ensure interagency cooperation and coordination in the handling of consumer concerns.

The existence of an advisory body could also provide a mechanism to respond to issues as they surface, without the public having to rely on the time-consuming process of requesting a legislative or executive branch study. An ongoing advisory body also provides an organized way in which state agencies might receive guidance as they address the complex and changing issues related to the continuing care retirement communities industry.

C. Scope of responsibility

- To monitor the development and quality of continuing care retirement communities and other residential facilities providing a continuum of care and to act on emerging trends and issues related to continuing care retirement communities, CCRC look-alikes and other similar retirement housing options.

It is anticipated that the group's efforts might include attention to:

- the need for additional consumer education and requirements for disclosure to consumers;

- the adequacy of the definitions of regulated services ("nursing services" and "continuing care," for example);

- changes in federal and state legislation and its

effect on the facilities and residents;

- the economic security of the facilities;
- quality and adequacy of services;
- an ongoing review of the adequacy and appropriateness of regulations;
- the balance between resident and provider rights;
- quality of resident contracts; and
- other issues brought to the group's attention by the executive agencies, legislature and general public.

The proposed elements of any continuing care advisory body reflect principles which might guide any state level advisory body, whether it be the Long-Term Care Council or the restructured state long-term care services system. It must be recognized, however, that the membership of the Long-Term Care Council does not currently include a balance mix of providers, residents and others, as recommended be incorporated in any advisory body on CCRCs.

A mechanism for monitoring the provision of services and promptly acting on provider and consumer concerns as they arise is an appropriate function of all good governments. Incorporating the proposed functions of a continuing care advisory body within the Long-Term Care Council or the proposed restructure of long-term care services would also recognize that continuing care retirement communities and other residential retirement facilities are a component of a larger long-term care delivery system and that their regulation should reflect both their special characteristics and their increasingly important role in the system.

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APPENDIX A

GENERAL ASSEMBLY OF VIRGINIA--1992 SESSION

HOUSE JOINT RESOLUTION NO. 169

Requesting the Secretary of Health and Human Resources to study the feasibility a desirability of creating a continuing care advisory council.

Agreed to by the House of Delegates, March 5, 1992
Agreed to by the Senate, March 3, 1992

WHEREAS, House Joint Resolution No. 372 of 1991 directed the Department for the Aging to review consumer protection provisions for residents of continuing care facilities; and

WHEREAS, the Department concluded that there is a need for additional authority to protect the welfare and rights of continuing care retirement community residents; and

WHEREAS, the American Association of Homes for the Aging and the Columbia Law School proposed a model statute which includes the creation of state-level continuing care advisory councils; and

WHEREAS, the Department for the Aging recommended that the possibility of creating such a council in the Commonwealth should be studied; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Secretary of Health and Human Resources be requested to study the feasibility and desirability of creating a continuing care advisory council.

The Secretary shall complete his work in time to submit his findings and recommendations to the Commission on Health Care for All Virginians, the Governor and the 1993 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The Department for the Aging offers the following recommendations to improve consumer protection for residents of continuing care retirement facilities:

RECOMMENDATION #1: Add to the disclosure statement a statement specifying that at entrance, residents will be given information, provided by the Commonwealth for this purpose, on how they might handle any complaints which arise while a resident of the CCRC.

RECOMMENDATION #2: The Department for the Aging's Office of the State Long-Term Care Ombudsman, with input from the State Corporation Commission, the Department of Health, the Department of Social Services, continuing care residents, consumer organizations, and providers representing the Virginia Health Care Association, the Virginia Association of NonProfit Homes for the Aging and the Virginia Association of Homes for Adults, shall publish consumer information for continuing care residents and prospective continuing care consumers and recommend procedures for dissemination of such information.

RECOMMENDATION #3: Establish a complaint clearinghouse operated by the Office of the State Long-Term Care Ombudsman where complaints from continuing care residents may be reported, documented and referred to the appropriate agency for handling.

RECOMMENDATION #4: Encourage continuing care communities to fulfill their responsibility for assuring communication with residents, pursuant to Section 38.2-4910 of the CCRC Act.

RECOMMENDATION #5: The language "or for filing complaints" should be added to the Code of Virginia, Section 38.2-4910. "No retaliatory conduct shall be permitted against any resident for membership or participation in a residents' organization or for filing complaints.

RECOMMENDATION #6: The contract between the continuing care community and the resident should include a statement, printed in 12-point type and in bold face above the signature line, encouraging the prospective resident to have an independent financial adviser or attorney of his/her choosing review the contract and disclosure statement before s/he signs.

RECOMMENDATION 7: The creation of a state level continuing care committee should be studied.

OVERVIEW OF CCRC ADVISORY COUNCILS IN OTHER STATES AND MODEL STATUTES ON CCRC ADVISORY COUNCILS

CALIFORNIA

Committee on Continuing Care Contracts of the State Social Services Advisory Board

- 9 members: 3 non-profit providers, 1 for profit provider, 3 consumers, CPA, actuary; appointed by the Governor and legislature

- hold meetings as deemed necessary

- advisory to the department on matters relating to continuing care contracts; duties include: review the financial and managerial condition of each facility; review the financial condition of any facility that the committee determines is indicating signs of financial difficulty; monitor the condition of facilities; make available consumer information; review new applications regarding financial, actuarial, and marketing feasibility; make recommendations to the department regarding needed changes in its rules and regulations, and upon request provide advice regarding the feasibility of new facilities and the correction of problems relating to the management or operation of any facility; the committee may report on its recommendations directly to the director.

  Also, a Continuing Care Provider Fee Fund was created to fund: statistical and actuarial studies for use by providers and for program management by the department; contracts with technically qualified persons to provide advice regarding the feasibility of proposed facilities and to review applications for permits to sell deposit subscriptions and certificates of authority.

CONNECTICUT

Continuing Care Advisory Committee

- 12 members; professionals such as accountants, and actuaries, and insurance representatives and may include residents of continuing-care facilities and others appointed by the Governor.

- meet no less than four times annually.

- to assist the commissioner on aging in the various reviews and the registrations functions to be performed under the Act and these regulations; to report on developments and any special

problems in the field of continuing care and to recommend changes in relevant statutes and regulations.

FLORIDA

Continuing Care Advisory Council to the Department of Insurance

- 10 members appointed by the Governor: 3 administrators, business and financial community representatives, CPA, attorney and 3 residents; members elect a chair
- meet at least annually
- act in an advisory capacity to the department; recommend to the department needed changes in statutes and rules, and upon the request of the department, assist in the rehabilitation or cessation of the business of the continuing care provider.

LOUISIANA

Continuing Care Advisory Council

- 7 members appointed by the Governor: 2 administrators, business and financial community representatives, CPA, attorney, resident; members elect a chair
- meet annually
- act in an advisory capacity to the insurance department; recommend changes in statutes and rules and upon request of the department, assist in the rehabilitation of facilities
- also, the Council shall be financially self-sufficient

MARYLAND

Financial Review Committee

- 7 members: 2 CPAs, 1 financial community representative, 2 consumers and 2 knowledgeable in the field; appointed by the Office director; committee elects its chair
- currently meeting quarterly
- reviews providers' financial matters referred to it by the Office on Aging; reviews materials to determine provider financial difficulty; provide consultation to the Office on corrective financial plans.

NEW HAMPSHIRE

Advisory Council on Continuing Care

- 12 members: ombudsman, insurance commissioner and director of the division of elderly and adult services serve as ex officio; also, 2 administrators, business and financial community representative, CPA, attorney and public members one of which is a resident; appointed by the Governor; members elect a chair
- meet annually
- act in an advisory capacity to the commissioner of insurance; recommend changes in statutes and rules and upon request of the commissioner, assist in the rehabilitation of facilities.

NEW JERSEY

Continuing Care Retirement Community Advisory Council

- 17 members: 2 Senators, 2 Assembly persons; 2 administrators, 3 residents, CCRC Trustee, business community representative, CPA, attorney and NJANHA representative; appointed by the Governor with advice and consent of the Senate; heads of health, insurance and community affairs serve as ex-officio; members elect a chair
- meet no less than four times annually.
- advise and provide information to the commissioner of the Department of Community Affairs on matters pertaining to the operation and regulation of facilities. Upon request of the commissioner, review and comment upon any proposed rules and regulations and legislation; make recommendations to the commissioner about any needed changes in rules and regulations and State and federal laws; assist in the rehabilitation of a facility, upon request of the commissioner.

NEW YORK

Life Care Community Council

- 11 members: Attorney general, heads of the departments of health, insurance, aging and social services and 6 public members appointed by the Governor; chaired by the head of the department of health.
- meet no less than four times annually
- approve or reject applications to obtain a certificate of authority for the establishment and operation of a life care

community; to require the reporting of such facts and information as the council may deem necessary; to coordinate the oversight of operating communities and to assign review and regulatory responsibility for particular aspects of such communities to the appropriate agencies; to assure consistent state supervision without duplication of inspection or regulatory review; to make such recommendations to the governor and the legislature; to establish and charge annual charges for operators, to subsidize expenditures incurred in reviewing applications and in inspecting, regulating, supervising and auditing life care communities; to review reports from the participating agencies regarding the operations and financial management of approved communities; to adopt rules and regulations; to revoke, suspend, limit, or annul a certificate of authority; and to develop guidelines for applications for certificates.

NORTH CAROLINA

Continued Care Advisory Committee

- 9 members appointed by the commissioner of insurance: 2 residents, 2 NCANHA representatives, CPA, architect or engineer and 1 health care professional

OREGON

Continuing Care Retirement Community Advisory Council

- 8 members appointed by the Assistant Director for Senior Services: 3 providers, business community representative, CPA, attorney and 2 residents; members elect a chair
- meet annually
- act in an advisory capacity to the division and make recommendations to the division on proposed rules

AMERICAN ASSOCIATION OF HOMES FOR THE AGED

Advisory Council

- 9-11 members, appointed by the Governor: 2 residents, 2 administrators, CPA, attorney, investment banker
- meet no less than twice annually
- review, and may propose, any contemplated changes in statute or regulations; propose recommendations to the regulator; may be asked to consult in the application of the statute or regulations.

1. Provide staff support to the Long-Term Care Council.
2. Develop appropriate fiscal and administrative controls over public long-term care services in the Commonwealth.
3. Develop a state long-term care plan to guide the coordination and delivery of services by the human resource agencies, including transportation services. The plan shall ensure the development of a continuum of long-term care programs and services for the impaired elderly population in need of services.
4. Identify programmatic resources and assure the equitable statewide distribution of these resources.
5. Perform ongoing evaluations of the cost-effective utilization of long-term care resources and perform special studies at the request of the Long-Term Care Council. (1982,c.346;1983,c.411.)

Section 2.1-373.7. Coordination of local long-term care services. The governing body of each county or city, or a combination thereof, shall designate a lead agency and member agencies to accomplish the coordination of local long-term care services. The agencies shall establish a long-term care coordination committee composed of, but not limited to, representatives of each agency. The coordination committee shall guide the coordination and administration of public long-term care services in the locality or localities. The membership of the coordination committee shall be comprised of, but not limited to, representatives of the local department of public health, the local department of social services, the community services board or community mental health clinic, the area agency on aging and the local nursing home pre-admission screening team. Each local jurisdiction or combination of jurisdictions shall submit to the Long-Term Care Council a plan indicating the agency designated as lead agency to administer the long-term care coordination committee. Costs for development of the plan required by this section shall be borne by the agencies of the coordination committee and not by the local governing bodies. The plan shall include a design to attain a goal of providing a range of services within the continuum of long-term care. By July 1, 1983, a plan shall be implemented which assures the cost-effective utilization of all funds available for long-term care services in the locality. Localities are encouraged to provide a service or services within each category of service in the continuum and to allow one person to deliver multiple services, when possible. (1982,c.346.)

Section 2.1-373.8. Nature of long-term care services.

[A] The long-term care services include the following categories: socialization services, health care servic. nutrition services, daily living services, and supportive services.

[B] As used in this section:

"Socialization services" includes telephone reassurance, friendly visiting and congregate meals.

"Health care services" includes home health care and community medical care.

"Nutrition services" includes home-delivered meals, food stamps and congregate meals.

"Daily living services" includes homemaker, companion, personal care and chore services, home repair, weatherization and adult day care.

"Supportive services" includes adult protective services, mental health and mental retardation services, counseling services and legal aid. (1982, c. 346.)