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Re-examine retirement communities, operators say

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State regulations governing certain types of senior retirement communities are too strict, costing extra time and money that would be better spent on the residents, according to the operator of the state's newest such facility.

Additionally, the state's rules place unnecessary costs on taxpayers, a senior community interest group said.

Retirement home experts gave recommendations Tuesday to state lawmakers as to how they would improve the operation of Continuing Care Retirement Communities in New York.

Seniors looking to become residents of a CCRC sign a life-care contract that allows for changing needs, and consequently different levels of services and housing over time. The Assembly health committee held a hearing Tuesday to discuss Article 46 of the Public Health Law, which was enacted in 1989 and created a process and criteria for establishing CCRCs in New York. The law states that life-care communities must provide unlimited long-term care, with residential, assisted living, nursing, dining, recreational and other services available within one setting and for one monthly fee, after paying an entrance fee.

The law was amended in 1997 to authorize modified communities, which provide a limited number of nursing home days included with the base fee, and then additional care on a fee-basis when the pre-paid days run out.

New York Association of Homes & Services for the Aging President Carl S. Young said there are just eight continuing care retirement communities that are operational in New York, with just eight more life-care and fee-for-service communities in pre-operational status due to an "extra-ordinarily stringent legislative and regulatory climate." In comparison, Pennsylvania has 141 life-care communities because of what Young calls "a less stringent legislative and regulatory requirements."

Patricia A. Doyle gave what she called her “unique perspective” on that problem. Doyle is the CEO of New York’s newest continuing care retirement community, Kendal on Hudson, a not-for-profit organization based in Kennett Square, Pa. that oversees a system of communities and services for older people. The organization went into operation on May 9, 2005.

She said that in the early summer, her facilities underwent three opening surveys for an enriched housing unit and skilled nursing facility.
Over four weeks, a surveyor from the Department of Health reviewed the facilities’ safety systems, operating systems and disaster readiness.

Doyle said both the enriched housing unit and nursing facility were on consecutive floors and had mostly the same infrastructure. She said when she received the survey results both surveys were duplicative.

“This is in no way intended as a criticism of the surveyor or the Department of Health,” Doyle said. “The issue is there is no mechanism in state code to allow one inspection to serve both levels of care, because New York views these units as if they were both independent, freestanding operations.”

She said the extra surveying costs the taxpayers money and costs the staff, who are involved in the survey process, time they could be spending serving residents.
Doyle also described another problem her facilities encountered over the summer. She said a decision by the Health Department made it necessary to seek licenses for diagnostic treatment center staff and homecare providers.

The model of care adopted by the Health Department required execution of full certificate process submissions, she said.

Doyle said the system needs a mechanism to shorten that process and focus on new information, as she was required to submit complete character and competency data to the Board of Directors with each application separately for each members.

“Nine of the 12 members had already been through the character and competency reviewed when we filed for our [continuing care retirement communities] approval,” Doyle said. She said all the data had to be filed separately for each of the two licenses. “We had to file hundreds of pages of identical paperwork, mostly about people who had already been approved by the Department of Health board members.”

She said this causes extra cost to the taxpayer, but “more importantly,” a delay of providing services to her residents. Kendal-on-Hudson received an approval from the Public Health Council last Friday and is 90 days away from operating the enriched housing and nursing facilities, almost a year since it began preliminary operation on May 9.

Young said New York's seniors have historically moved to CCRCs in surrounding states that allow for more affordable options. He said that in 20 years, New York's population of senior citizens will grow from 3 million to 4.4 million, reflecting a 37 percent increase.

Young encouraged seniors to invest their assets in long-term care services within a retirement community. He said that would help prevent asset dispossession used to qualify for Medicaid.

Young said there should be a level playing field for life-care communities and fee-for-service communities, which allow residents to pay for services as they need them. He said a recent change in the law for fee-for-service facilities created an unfair financial advantage compared to life care facilities.

He added that it would be beneficial to eliminate the cap on nursing home beds. Existing legislation provides for 1,000 residential health care facility beds for retirement communities development in New York. He said 593 beds are already committed, which leaves 407 beds available. He said that was insufficient for the growing senior population that is growing over the next 20 years.

Assemblyman Richard Gottfried, D- Manhattan, who chairs the health committee, asked Young if the cap should be increased or lifted entirely. Young urged the Assembly to eliminate the cap entirely, but an increase to 2,000 beds would suffice. Young advocated for a change in Department of Insurance Regulation 140 in Title 11 of the New York Codes of Rules and Regulations, which requires retirement community operators to set "excessively high entrance and monthly fees for their residents. In addition, the regulations designed to protect the home's resident reserve account only allow investment … with virtually no risk." He said while guidelines to prevent "foolish" investment are important, the current regulations are preventing a "reasonable" return on investments.

Young is working with state agencies on a "more realistic" reserve account and investment opportunities, modeled after other states' policies.