

Senate Health and Human Services Committee

Sophie Walsh 271-3469

SB 124-FN, relative to continuing care retirement communities.

Hearing Date: February 19, 2025

Time Opened: 10:35 a.m.

Time Closed: 11:07 a.m.

Members of the Committee Present: Senators Rochefort, Avard, Birdsell, Prentiss and Long

Members of the Committee Absent: None

Bill Analysis: This bill recodifies RSA 420-D, relative to continuing care communities. The bill expands certificate of authority requirements, annual reporting requirements, and life care contract requirements. The bill revises escrow requirements for entrance fees and specifies the notice required prior to contract cancellation by either party. The bill includes a bill of rights for continuing care community residents. The bill also requires the provider to notify the insurance department of the intended sale or transfer of the community and may require the provider to submit a financial plan to the insurance department to demonstrate solvency.

The bill is a request of the insurance department.

Sponsors:

Sen. Ricciardi

Sen. Pearl

Who supports the bill: Sen. Ricciardi, Sen. Pearl, Rep. Janet Lucas, Dawn McKinney (NH Legal Assistance), Susan Buxton (Office of the Long-Term Care Ombudsman), Jessica Lee, Oliver Matte, and Hannah Willcutt.

Who opposes the bill: No one.

Who is neutral on the bill: D.J. Bettencourt and Steven Notinger (NH Insurance Department), Andrew Hosmer (Riverwoods), Lisa Henderson (LeadingAge Maine & New Hampshire), and Michael Flaherty (Taylor Community).

Summary of testimony presented:

Senator Denise Ricciardi, Senate District 9

- Senator Ricciardi stated that this bill addresses the regulatory framework governing Continuing Care Retirement Communities (CCRCs) in New Hampshire.
- CCRCs are residential facilities designed specifically for older adults. They offer a range of living options and care services within a single location, including independent living, assisted living, and skilled nursing care.
- The CCRC model is structured to provide a continuum of care allowing residents to transition seamlessly between different levels of support as their needs evolve.
- This flexibility eliminates the need for relocation, which is appealing to many older adults and their families.
- Senator Ricciardi noted that CCRCs often require a substantial entrance fee, along with ongoing monthly fees fluctuating based on the chosen type of resident and care plan.
- Operating CCRCs poses significant financial risks, which can have serious implications for residents.
- Over the past 15 years, the New Hampshire Insurance Department has seen CCRCs face considerable financial challenges.
- In response to those challenges, the Department has undertaken a comprehensive analysis of the legislative framework governing CCRCs. This analysis aimed to identify proactive measures to address the challenges faced by financially troubled facilities, with the ultimate goal of protecting vulnerable seniors.
- The findings of this analysis are encapsulated in SB 124. This bill seeks to implement an early warning system for financial distress, ensuring that the Department can act promptly before a crisis escalates. This safeguards the interests of residents.

Commissioner D.J. Bettencourt & Steven Notinger, New Hampshire Insurance Department

- Commissioner Bettencourt explained that the Insurance Department is requesting additional oversight tools through this bill for three predominant reasons.
- The existing statute is over 30 years old and urgently requires an update.
- The Department's mission is focused on consumer protection. This is especially critical for CCRCs because the potentially impacted consumers are a vulnerable population.
- The Department has seen some serious financial distress with some CCRCs. Currently, the statutory framework alerts the Department of this financial distress when it has already escalated to a point where the entity is in full-blown crisis. The Department finds this to be insufficient.

- In the past decade, the Department has responded to at least 3 CCRCs facing major financial crises.
- In the most recent instance, the affected CCRC had only 10 days' worth of cash on hand. The Department had to place the CCRC into receivership.
- In all three instances, the Department facilitated the sale of the distressed CCRC to a new operator, providing positive outcomes in the end.
- Commissioner Bettencourt described the consequences of a CCRC going under as catastrophic. Seniors can lose everything and can find themselves with nowhere to go and their entire provider network upended.
- This bill is a balance between ensuring that the Department is not over-regulating or being burdensome to the industry, while implementing an early warning detection process that allows them to address financial challenges faced by CCRCs.
- Senator Avard asked how many CCRCs are currently in jeopardy.
- Commissioner Bettencourt said he is not aware of any that are currently facing serious financial challenges. However, under the current regulatory framework, the Department would not know of a CCRC's financial distress until it has gotten to a serious point.
- Senator Avard asked if there is a ballpark estimate for the fiscal note.
- Commissioner Bettencourt said he does not believe there will be any cost to the Department.
- There is a statutory requirement for every CCRC in New Hampshire to complete a financial market conduct exam within a 5-year period. The Department is in the process of creating a set schedule, so that all CCRCs will be aware of exam scheduling and expectations.
- However, the Department needs assistance from the legislature to improve their statutory oversight tools.
- Commissioner Bettencourt explained that there is a forthcoming amendment that reflects the continuing work and collaboration done with the Department and CCRCs.
- This is not a one-size-fits-all solution, as each CCRC is structured a bit differently. Commissioner Bettencourt said there is 90-95% agreement among CCRCs on this proposal.
- Senator Long asked what the amendment addresses.
- Mr. Notinger explained that the amendment addresses discreet issues throughout the bill, and it does not change the tenor of the bill.
- Mr. Notinger explained that when joining a CCRC, one pays an entrance fee of several hundred thousand dollars and pays a monthly fee for care.

- The idea behind this bill is that if hundreds of thousands of dollars are paid up front to access what is only a promise to repay from the CCRC to the resident, regulations should be required.
- The Department does not want a situation in which people are paying these large entrance fees and do not know if there is any solvency to the enterprise they are paying.
- In the amended statute, the Department has given themselves an opportunity to react quickly. It requires CCRCs to report quarterly on certain financial factors. Mr. Notinger noted this should be easy because they do it anyway.
- Under this change, CCRCs performing well will not be affected.
- Senator Rochefort asked where the delineation of roles in this space is between the Insurance Department and the Department of Health and Human Services.
- Commissioner Bettencourt explained that the Insurance Department oversees the financial aspects and contractual obligations of these entities, while DHHS oversees the facilities themselves and the care being provided.

Andrew Hosmer, Riverwoods

- Mr. Hosmer stated that he is representing Riverwoods, an organization that operates a system of nonprofit CCRCs in New Hampshire.
- He said this is a good first step forward in trying to bring more accountability and maintain stability for CCRCs throughout the state.
- There are a few areas of the bill that they would like to see addressed, primarily relating to the expectations of affiliates.
- Mr. Hosmer presented written testimony submitted by the CFO of Riverwoods.
- It explained that senior living care providers are bound by their charitable mission to serve current and future residents of facilities, in addition to anticipating and meeting the needs of older adults in their communities as their needs change over time.
- Mr. Hosmer recommended amending Page 25 Lines 35-36 to add more clarity and objectivity to what the commissioner will be doing when looking at potential affiliates.
- He recommend that it reads as “the commissioner may refuse to approve such transfers until full disclosure has been made to his or her satisfaction of the terms and conditions of the transfer and the commissioner has determined that such transfer: one, will be to a qualified provider to whom a certificate of authority will be issued under the statute; two, will not impair or endanger the financial stability of the CCRC and; three, will not diminish the services or protections given to current residents.”
- Mr. Hosmer said he would be happy to work with the Insurance Department on this.

Lisa Henderson, LeadingAge Maine & New Hampshire

- Ms. Henderson stated that she is Executive Director of LeadingAge Maine & New Hampshire. They represent all 14 of the licensed CCRCs in the state, and are neutral to the bill.
- Their association and its members have been engaged in an extensive series of meetings with the Insurance Department. They share goals with the Department of protecting consumers and ensuring the financial strength of CCRCs.
- They do have some areas of concern with the bill that they find to be overreaching. They are trying to protect the rights of private non-profit organizations that are overseen by boards of directors and are accountable to the broader public to not be impeded in their business activities.
- In the 1980's, it was an approximate 50/50 split between one-site and multi-site CCRCs. Now, approximately 73% are multi-site organizations and only 28% are single site.
- Ms. Henderson explained that we are going to see a lot more of this activity and this is for the betterment of organizations, as they can attract better talent and more efficient operations.
- Their members are happy to submit to more regular reporting. Financial reporting on a quarterly basis is a normal practice for them.
- Senator Rochefort asked if the Morrison Communities in Whitefield is considered a CCRC.
- Ms. Henderson explained that the Morrison Communities is not considered a CCRC, but rather a multi-level community because they do not take an entrance fee or have a contract that outlines a promise of care to move to the next level.
- Senator Rochefort asked if there is regulatory framework similar to what is being considered today for that type of model.
- Ms. Henderson explained that they would be subject to licensure requirements for their assisted living and nursing care. She noted there is not a consumer protection issue in that case.

Michael Flaherty, Taylor Community

- Mr. Flaherty stated that he is the President and CEO of the Taylor Community. They operate three communities under one umbrella, including one that they recently absorbed who was in financial distress.
- Mr. Flaherty is in general support of this bill.
- There have been several thorough conversations with the Insurance Department in a collaborative effort to put this legislation together.
- Ultimately, he thinks this legislation does the job and meets its objective of protecting the residents who invest in CCRCs, while also protecting organizations from themselves when poor management occurs.

Susan Buxton, Office of the Long-Term Care Ombudsman

- Ms. Buxton stated that she is the State Long-Term Care Ombudsman. The Office of the Long-Term Care Ombudsman works to resolve problems related to the health, safety, welfare, and rights of individuals who live in long-term care facilities through education, investigation, mediation, and advocacy.
- She is speaking in support of this bill on behalf of the Office of the Long-Term Care Ombudsman and the New Hampshire State Commission on Aging.
- In 2021, Ms. Buxton served as the Patient Care Ombudsman for the Chapter 11 bankruptcy of a CCRC in Keene. While there was a positive outcome, she experienced firsthand how distressing the experience was for residents.
- This bill will give people greater protection, allowing them to have more certainty in the future that they are investing in.
- Ms. Buxton reviewed what she finds to be the valuable aspects of the bill.
- It requires additional information for a certificate of authority and in disclosure statements.
- It adds financial requirements to the annual report, which will allow for early warning of issues and a requirement for a financial plan if there are unsound financial conditions.
- It requires that residents be paid ahead of operating expenses if a facility goes into receivership.
- It creates a residents' bill of rights and a mechanism to file a complaint with the Department alleging a violation of these rights.
- Ms. Buxton noted that some areas of the bill need clarification.
- On Page 21 Line 7, she thinks 'just cause' needs more clarification as it related to the different living situation within the CCRC. There is clear guidance in RSA 151 for this.
- Senator Rochefort asked if Ms. Buxton has language prepared to clarify her concerns in the bill. Ms. Buxton said she would be happy to submit something.

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Date Hearing Report completed: March 4, 2025