A Brief History of the Maryland Continuing Care Residents Association (MaCCRA)

1993 – Summer – Initial startup meeting with MANPHA (Maryland Association of Non -Profit Homes for the Aging)

1993 – November – MaCCRA's First Annual meeting, Senator Paula Hollinger was the keynote speaker

1994 – MaCCRA first introduced legislation. MANPHA was at odds with MaCCRA and testified against the bill. The Senate Finance Committee instructed both MANPHA and MaCCRA to sit down and arrive at a compromise. Accord was reached but the legislation wasn't passed.

1995 – Worked with MANPHA and the Office on Aging to establish a Continuing Care Advisory Committee

1996 – MaCCRA working with MANPHA, the Department of Aging, and consumers developed amendments to Article 70B. This legislation (SB 543) is an important achievement as it established requirements concerning the following: the operating reserve, governance, disclosure statement, transfer of assets, change of ownership, bankruptcy, renovations and expansions.

1997 – **SB 332/HB 783 – "Health Maintenance Organizations - Referrals to Continuing Care Facilities"** requires the primary care provider (PCP) of a Medicare HMO enrollee who is a resident of a continuing care facility to refer the enrollee to the skilled nursing unit at the resident's continuing care facility after receiving health care services at an acute care facility if: (1) the continuing care facility agrees to become an HMO participating provider; (2) the patient and the PCP do not choose a different course of treatment; (3) the continuing care facility meets State licensing and certification guidelines, including Medicare certification; and (4) the skilled nursing unit is Medicare certified. The continuing care facility is not obligated to accept anyone other than the residents of the continuing care facility for health care services; and the HMO and the continuing care facility are not obligated to advertise the facility's participation in the HMO's provider panel.

1998 – MaCCRA was an active supporter of **HB269/SB176 – "Department of Aging"** – removed the Office on Aging from the Executive Department and creates the Department of Aging as a principal department of the State government. MaCCRA lent its support and credibility to a number of bills, and continued to gain visibility among legislators and other interest groups. Our firm participated in the meetings of such groups as the Health Provider Coalition and the Long Term Care Coalition. These provided opportunities to coordinate legislative activities with other organizations for bills affecting MaCCRA members.

1999 – **SB 159/ HB 360 – "Certificate of Need Exemption - Concurrent Direct Admissions"** Specifies that a continuing care retirement community (CCRC) does not lose its exemption from CON for admitting an individual directly to a nursing facility within the CCRC if the admittee's spouse or relative is admitted at the same time to an independent living unit or assisted living unit within the CCRC.

2000 – **SB 146/ (HB 1295) "Continuing Care Communities - Certificate of Need Exemption - Direct Admission"** – Passed – is designed to offer some protection to long-term CCRC residents who will move from individual or assisted living into nursing home beds.

SB 403/ HB 864 "Continuing Care Communities - Certificate of Need Exemption - Comprehensive Care Nursing Beds" – Passed - provides for an exemption from CON requirements if the number of nursing home beds in a CCRC does not exceed: (1) 24% of the number of independent living units (ILU) in a CCC with fewer than 300 ILUs; or (2) 20% of the number of ILUs in a CCC with 300 or more ILUs.

2001 – MaCCRA supported **House Bill 472 – 'Continuing Care Agreements – Designation of a Beneficiary - Entrance Fee' (Del. Hammen – Passed)** which requires a continuing care agreement to be in a form acceptable to the Department of Aging (DOA), and include a provision allowing a subscriber (resident) to designate a beneficiary for receipt of any refundable portion of the facility's entrance fee upon the subscriber's death. The designation must be: (1) made in writing; (2) witnessed by two or more competent witnesses; (3) noncontingent; and (4) specified in percentages to account for 100% of the refund due.

2002 - MaCCRA supported **Senate Bill 355 'Department of Aging - Continuing Care Retirement Communities – Regulation' (Chairman, Finance Committee) (passed)** adopts recommendations made by the Department of Aging's Continuing Care Advisory Committee. It broadens the health related services CCRCs must provide and what it means to make medical and nursing services or other health related services available to subscribers. Health related services must include priority admission to a nursing home or assisted living program, or assistance in daily living activities that do not include meals. Making available either medical and nursing services or other health related services means the provider or affiliate has the services readily accessible for subscribers whether or not the services are specifically offered in the written agreement for shelter.

The bill also enables people to receive refunds from CCRCs more quickly if they move out within the first 90 days. It also requires providers to refund an individual's entrance fee within 60 days of an agreement being terminated or the individual's death under certain circumstances. An entrance fee is defined as a sum of money or other consideration, other than a surcharge, paid that assures continuing care for more than one year or for life and is at least three times the weighted average of the monthly cost of periodic fees charged for independent and assisted living units.

The bill requires CCRCs to include at least one resident on its governing board. If the provider owns or operates more than three CCRCs in the State, there must be at least one

resident on the governing board for every three facilities.

The Department of Aging (MDoA) may petition for the appointment of a receiver for a CCRC if the department has determined that there is a significant risk of the provider's financial failure.

In addition, CCRCs will have a more flexible time frame to fund their operating reserves. CCRCs will have up to ten fiscal years after the later of October 1, 1996 or the date of the CCRC's initial certificate of registration to set aside operating reserves for each facility that equal 15% of the net operating expenses for the most recent fiscal year a certified financial statement is available.

MDoA may impose a civil penalty of up to $5,000 per violation for any action or inaction that violates the bill's provisions or related regulations. Before imposing the penalty, MdoA must give a violation notice to the provider. CCRCs will have the right to appeal the penalty under the Administrative Procedure Act. All money collected from penalties must be deposited into the general fund.

House Bill 321 (Ch. 57) (Del. Malone, et al.) / Senate Bill 180 (Sen. Bromwell) – 'Continuing Care Communities - Direct Admissions Into Comprehensive Care Nursing Bed - Repeal of Abrogation Provision' (both passed) repeal the June 30, 2002, termination date for provisions that allow Continuing Care Retirement Communities (CCRCs) to have direct admissions to their nursing home beds and still retain their Certificate of Need (CON) exemption. Prior to 2000, CCRCs were excluded from CON regulation because they limited their nursing home bed admissions to subscribers of their own communities and were not perceived as direct competitors with CON-regulated nursing homes. Permitting direct admission to CCRC nursing home beds, as provided by Chapter 248 of 2000, puts CCRCs in direct competition with traditional nursing homes, potentially reducing nursing home admissions. According to a January 1, 2002, report by the Maryland Health Care Commission, there were 86 direct admissions to CCRCs during a one-year period, a number that did not significantly impact admissions to traditional nursing homes.

2003 - The major piece of legislation for MaCCRA this year was **House Bill 79/Senate Bill 127 (FAILED).** The intent of the legislation was to address key areas of concern still left unresolved from last Session and Senate Bill 355. Even though the bills ultimately failed, our testimony raised awareness among the legislators off some of the concerns of CCRC residents. As a result Senator John Astle, sponsor of the Senate Bill, wrote a letter requesting that Secretary Jean Roesser of the Department of Aging provide data on CCRC fee increases over the last 5 years, and to look into ways to develop of a mediation mechanism for CCRC residents. The letters ask that the Department report their findings back to the House and Senate by December 2003.

2004 – Passage of Grievance Procedure (**House Bill 1001 (Delegate Goldwater, et al)/ Senate Bill 785 (Senator Klausmeier) "Continuing Care Facilities - Internal Grievance Procedure" PASSED-** This bill requires a continuing care facility to establish an internal grievance procedure for addressing complaints. A facility must include in its disclosure statement to the

Maryland Department of Aging (MDoA) a description of its internal grievance procedure.

Each agreement executed between a subscriber and a provider must state that there is an internal grievance procedure to investigate subscribers' grievances.

Specifically the statute states:

A PROVIDER SHALL ESTABLISH AN INTERNAL GRIEVANCE PROCEDURE TO ADDRESS A SUBSCRIBER'S GRIEVANCE.

AN INTERNAL GRIEVANCE PROCEDURE SHALL PROVIDE FOR:
THE OPPORTUNITY FOR A SUBSCRIBER TO SUBMIT A WRITTEN GRIEVANCE TO THE PROVIDER; AND

A RESPONSE FROM THE PROVIDER WITHIN 45 DAYS AFTER RECEIPT OF THE WRITTEN GRIEVANCE AS TO THE INVESTIGATION AND RESOLUTION OF THE SUBSCRIBER'S GRIEVANCE.

The law went into effect October 1, 2004.

2006 - Senate Bill 103 Sponsored by the Chairman, Finance Committee (By Request – Department of Aging) – "Continuing Care Contracts" [PASSED] This departmental bill makes various changes to the statute authorizing Department of Aging to regulate continuing care contracts. It also expanded the grievance procedure to include the following 2 requirements:

1 **a provider must respond in writing within five days after receiving a subscriber's written grievance, and**
2 **the subscriber who files a written grievance has the right to a meeting with management within 45 days after the provider receives the written grievance**

2008 – House Bill 1351 - Continuing Care Retirement Communities – Subscriber Grievances [PASSED] The original provisions of the bill included a series of step by step guidelines guaranteeing both management and resident attention to a grievance, an external channel of appeal allowing CCRC residents to take their grievance outside of the facility to the Attorney General's office if necessary, and a requirement that CCRC providers submit, on a quarterly basis, the number and nature of grievances and any provider action taken as a result of them to the Department of Aging and the Health Education and Advocacy Unit of the Attorney General's Office.

The bill was amended in the Health and Government Operations Committee, and as it passed the General Assembly it requires: continuing care retirement communities, by December 1, 2008, to submit to the Department of Aging and the Health Education and Advocacy Unit in the Office of the Attorney General:

1 the number of written grievances submitted during calendar 2007;
2 a brief summary of each grievance filed using nonindividually identifiable information; and

3 any action taken by the provider regarding the resolution of each grievance.

The legislative process is an incremental one, and the passage of HB1351 is a success. The data collection House Bill 1351 requires is an important first step towards an equitable and effective grievance procedure.

2009 - House Bill 843 (Del. Mary Ann Love, et al) "Continuing Care Retirement Communities - Internal Grievance Procedure and Mediation" [PASSED]

This bill expands the components that must be included in a continuing care retirement community's (CCRC) internal grievance procedures. CCRC internal grievance procedures must at least allow a subscriber or group of subscribers collectively to submit a written complaint; require the provider to assign personnel to investigate the grievance; and give a subscriber the right to meet with management within 30, rather than 45, days after submission of a written grievance.

The bill also authorizes subscribers and providers to seek mediation within 30 days after the conclusion of an internal grievance procedure. The mediation must be nonbinding, and the provider and subscriber may not be represented by counsel.

2010 – The Secretary of Aging reconvened the **Continuing Care Advisory Committee (CCAC)** to conduct a thorough review of current regulations and statutes concerning continuing care retirement communities, and to make recommendations regarding changes that need to be made to the regulations and/or statutes. The CCAC is made up of representatives from the Department of Aging, the legislature, the CCRC management companies, elder law, and consumers. MaCCRA has two representatives in addition to 2 other resident members on the CCAC.

2011 - The Continuing Care Advisory Committee (CCAC) completed its more than one year long review of legislation and regulations affecting continuing care retirement communities (CCRCs) in Maryland.

CCAC recommendations make progress in protecting the following fundamental rights of CCRC residents:

1. Recognition of residents as principal stakeholders;
2. Access to information;
3. Response to grievances;
4. Transparency of business operations;
5. Reduction of risks to residents; and
6. Department of Aging oversight and authority to act.

Legislation was introduced in two bills to implement the CCAC recommendations:

HB 1286 contained recommendations, approved unanimously by the CCAC members, which would:

1. Increase a statutory operating reserve from 55 to 90 days of expenses and limit the circumstances under which it could be pledged;
2. Require disclosure of the community's operating budget;
3. Broaden grounds for Department of Aging disapproval of contract terms;
4. Require that responses to grievances be in writing.

HB 1285 contained recommendations, approved in most cases by large majority votes in the CCAC but with some "No" votes, which would:

- Permit inter-State obligated groups that have joint and several liability among members;
- Lower threshold for Department approval of asset transfers in any 12-month period from 10% to 5% of total assets;
- Require actuarial studies for all CCRCs, but only every five years for CCRCs offering fee-for-services contracts;
- Increase from one to two residents on governing boards;
- Permit residents to nominate, and to ratify selection of, resident board members;
- Permit Department to revisit existing contracts;
- Permit resident to seek help, except from an unrelated attorney, in presenting a grievance;
- Require disclosure of:
  - Summary of non-confidential board actions;
  - Existence of a MaCCRA chapter;
  - Delayed entrance fee refunds;
  - Whether a CCRC is stand-alone or financially tied to one or more other entities;
  - Financial statements of entities receiving fund transfers and of parent corporation.

Neither bill passed. The Chairmen of the House Health and Government Operations Committee and the Senate Finance Committee directed that a workgroup of stakeholders convene over the interim to develop mutually agreed upon legislation.

2012 - Legislation was introduced this Session addressing issues and recommendations developed by the Continuing Care Advisory Committee (CCAC). Throughout the CCAC process, last Session, and over the summer and fall of 2011 our focus has been to develop and pass legislation that:

1. Provides for increased transparency and disclosure of CCRC finances, operating reserves, transfers of assets and refunds,
2. reduces the risk that any Maryland CCRC will get into serious financial difficulty,
3. strengthens resident rights and protections,
4. ensures that residents and future residents have all the information they need to make informed choices, and
5. give residents a role in their community more commensurate with their stake in its success.

Senate Bill 485 (Senator Kelley, et al) and **House Bill 556** (Delegate Hubbard)both passed. The bills establish additional requirements with regard to continuing care agreements, disclosure statements, and grievance procedures; require providers to make specified information available to subscribers; modify requirements for the sale or transfer of a facility; restrict the pledging or encumbering of operating reserve assets; and increase the operating reserve that a provider must set aside for each facility. Specifically:

"Continuing Care Agreements

Under current law, a continuing care agreement between a provider and a subscriber must include certain specified information related to consideration paid, services to be provided, payment terms, and procedures for cancellation and transfer. In addition, the agreement must state that the subscriber has received, at least two weeks prior to signing the agreement, a current version of the provider's written rules.

Under the bill, a provider must also represent in the agreement that the subscriber has also received (at least two weeks prior to signing) the continuing care agreement form and the current disclosure statement with the attachments, exhibits, and addenda. In addition, the bill requires a continuing care agreement to (1) have a table of contents; (2) state that the subscriber acknowledges reviewing all of the terms of the entrance fee refund clauses and provisions in the agreement; (3) include one of three model statements (or a similar statement) regarding the use of fees paid by subscribers of the community; (4) if the provider offers a continuing care agreement that promises a contractual entrance fee refund after occupancy, state whether the portion of the entrance fee to be refunded is held in trust or escrow for the subscriber after occupancy; and (5) if the payment of a contractual entrance fee refund after occupancy is conditioned on the re-occupancy or re-contracting of the subscriber's unit, state that the provider agrees to make reasonable efforts to satisfy the condition.

Current law specifies that, if a provider executes a separate assisted living or comprehensive care agreement, the provider is not required to submit the assisted living agreement, the comprehensive care agreement, or any requests for modification to MDoA for approval. Under the bill, a provider that uses a separate assisted living or comprehensive care agreement must state in its continuing care agreement that, if the subscriber wishes to transfer to assisted living or comprehensive care, the subscriber will be required to sign a separate agreement (that is not subject to MDoA approval) for those services. The bill specifies that the provider may, however, include a provision stating that assisted living or comprehensive care contracts and services are regulated by the Office of Health Care Quality within the Department of Health and Mental Hygiene. The bill also specifies that MDoA is authorized to deny approval of a continuing care agreement that contravenes applicable provisions of law.

Disclosure Statements

Under current law, a continuing care disclosure statement must include certain specified information related to the facility, the organizational structure of the provider, and financial matters. The bill requires a continuing care disclosure statement to contain additional information, including (1) a table of contents; (2) if the provider has a governing body, a description of the process used by the provider to select a subscriber member of the governing body and satisfy other specified requirements; (3) if the provider offers a contractual entrance fee refund after occupancy, a statement whether the portion of the entrance fee to be refunded is held in trust or escrow for the subscriber and, if applicable, a description of where and how the funds are held; and (4) if an extensive agreement is offered, a specific statement regarding coordination of benefits.

The bill also requires a facility's marketing materials, including disclosure statements, to include a specified disclaimer if the materials state that part or all of an entrance fee may be refundable.

Other Provisions
The bill specifies that a provider must respond in writing to a written grievance and clarifies that a grievance can be filed by a group of subscribers. The bill also requires the provider to make available to subscribers (1) the non-confidential portions of the governing body's meeting minutes (or a summary of those portions) within one month of approval of the minutes; and (2) the facility's most recent finalized budget.

The bill modifies requirements (including whether MDoA approval is required) for the sale or transfer of a facility. Beginning January 1, 2014, the bill restricts the pledging or encumbering of operating reserve assets. Beginning January 1, 2023, the bill also increases the operating reserve that a provider must set aside for each facility to 25% (from 15%) of the facility's net operating expenses for the most recent fiscal year and for which a certified financial statement is available."
- Department of Legislative Services

2013 – No legislation requested and none enacted. Presence in Annapolis March 2013 to let our legislators know what CCRCs are about and what our agenda will be 2014 for actuarial study of Type C CCRCs.

2014 – Legislation - "Actuarial Studies for Type C CCRCs every five years" was not passed. There was excellent MaCCRA representation and testimonials. Plan to return 2015 requesting same legislation as there will be a new HGO committee and subcommittee because of retirement and elections.

2015 – Legislation SB91 "Actuarial Studies for Type C CCRCs every five years" defeated 6-5 in State Senate.

2016 – Legislation, "Actuarial Studies for Type C CCRCs every five years" was not passed again in the State Senate.

2017 – Legislation, "Traffic Light for CCRCs Facing on State Roads," SB418 and HB411 did not make it out of committees. However, SHA granted Broadmead a traffic light after a vehicle count was made qualifying this community.