

CCRCs – Effective January 1, 2023

SB 707 (Cortese) Chapter 538, Statutes of 2022

Prepared for CALA Members October 2022

*DSS Implementation Plan pending

Why was this bill introduced?

This bill was introduced in an effort to provide DSS with earlier warning of a CCRC that could be experiencing financial distress so the department could use existing authority to require a financial plan if needed.

What was CALA's position?

CALA ultimately opposed the bill after many months of trying to work with the author, sponsors, and legislative staff to ensure that the situations that would “trigger” reports to DSS and potentially a financial plan, were actual indicators of a potential financial challenge. Although significant amendments were taken during the process, the bill remained flawed and risks raising unnecessary alarm.

How does this bill solve the problem?

Existing law authorizes the department to require a CCRC to submit a financial plan if the department believes a CCRC is at risk of insolvency, is financially unsound, or at risk of being unable to meet its continuing care contract obligations. This bill adds additional reporting requirements triggered by occupancy level and specific financial situations, on which the department may base a decision to require a financial plan.

The bill also renames the Continuing Care Provider Fee Fund to the CCRC Oversight Fund.

What do CCRCs need to know?

New reporting “triggers”

This bill requires a CCRC to notify the department within two weeks after the end of a calendar month in which the overall average occupancy of all levels of care is below 80 percent and one of the following occurs:

- The provider fails to maintain the minimum reserve required pursuant to Section 1792.3.
- The provider fails to meet one or more of its debt covenants from a third-party lender, a bond issue, or a third-party lender and a bond issue.
- The provider has a net operating loss for a period of three consecutive months.

Occupancy calculation

Overall average occupancy is the average for all units over the preceding two months, excluding units that were not on the market or already reserved. Overall average occupancy does not apply to newly opened CCRCs for a period of 12 months from the date of opening. A provider shall not keep a unit off the market to avoid repaying all or a portion of the entrance fee of a repayable contract.

Maintaining trade secrets

Providers are still required to provide financial plans within 60 days of the department's request, however, if the provider believes the plan contains trade secret information protected under the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code), the provider shall submit a separate version of the plan with the trade secret information redacted, and identify those sections to the department. The unredacted version of the plan need not be shared with residents.

Periodic updates

Periodic reports shall explain the provider's progress and occur at intervals established by the department.

Sharing the plan with residents

The bill requires the provider to distribute a copy of the plan (or approved redacted form of the plan) to the resident council or association within 10 days of approval. Periodic reports shall also be distributed to the resident council or association within 10 calendar days of submission to the department.

Further action by the department

Existing law authorizes the department to develop a corrective action plan or require the provider to obtain additional management capability. This bill adds that a corrective action plan or plan for reorganization also be shared with the resident council or association or resident council and resident association, within 10 days of submitting notification to the department.

Notice to prospective residents

The bill requires the provider to share its approved financial plan, the approved redacted form of the plan, or any revised version of the financial plan, and any subsequent periodic report with a prospective or incoming resident no less than 60 calendar days before entering into a continuing care contract until the provider has corrected the problems and deficiencies identified by the department.

If a prospective or incoming resident has an urgent need for placement that requires occupancy less than 60 days from their decision to go forward with a contract, the resident shall sign a declaration indicating all of the following:

- There is an urgent need for the resident to obtain a placement at the community.
- The resident has received a copy of the community's financial plan or redacted or revised financial plan.
- The copy of the financial plan or redacted or revised financial plan was provided within a reasonable time of the provider becoming aware that a placement would be required in less than 60 days.
- The resident waives the right to receive the financial plan, or redacted or revised financial plan, 60 days in advance of their executing a continuing care contract.

The paragraph indicating that the resident received the financial plan, or redacted or revised financial plan, shall be initialed by the resident. The declaration shall be kept in the resident's file.