

Preliminary Exposure Draft

For Comment and Review

Text of Model CCRC Governance Act

1. This Law shall be known as “The Continuing Care Retirement Community Governance Act” and may be referred to as the CCRC Governance Act.
2. The legislature finds that residents in Continuing Care Retirement Communities (CCRCs) or participants in a Continuing Care At Home (CCAH) program should have options for involvement in the governance of the providers commensurate with their investment in Continuing Care Contracts.
3. The legislature further finds that it is in the public interest to encourage such Continuing Care Contracts, since they allow people facing the hazards of aging to meet those hazards without becoming a burden on others including the state. Inclusion in the governance of the organizations they have thus trusted can help encourage acceptance of these publicly desirable arrangements.
4. Accordingly it shall be unlawful in this [state or commonwealth] to exclude such residents or participants from service on the related provider governing board merely because of such residency or such participation.
5. In the selection of persons for such board service primacy shall be given to persons possessing specialized experience or knowledge relevant to the operations governed, but among such persons deemed to have the requisite qualifications and to have background germane to the governance needs, priority shall first be given to those who are residents, participants, or in the case of an entity receiving more than half of its support from philanthropic sources, donors.
6. If upon examination the [State or Commonwealth CCRC Regulator] finds that such residents, participants, or donors have been systematically excluded from governance, then the [State or Commonwealth CCRC Regulator] is authorized to apply under the authority of this statute for an order directing the rehabilitation of the affected CCRC or CCAH provider.
7. The absence of a reasonable number of residents on the governing board shall be taken as *prima facie* evidence that the provider has not made a good faith

effort to include such residents as are qualified. Accordingly, it shall create a rebuttable presumption of noncompliance with this Act if there are fewer than 25% of the board members who are residents or, alternatively, three resident board members, if there are fewer than twelve board members. If either of such conditions exists, then it shall be a duty of the [State or Commonwealth CCRC Regulator] to proceed as provided in Paragraph 6 above as though the evidence were clear that residents have been systematically excluded from governance.

8. Before applying for such an order the [State or Commonwealth CCRC Regulator] shall give the affected provider organization 90 days' notice of the pendency of such action, and the provider organization may within 45 days from such notice file with the Regulator a plan for correction of the deficiency and, if such plan is accepted by the Regulator, the deficient provider shall be allowed to continue unchanged subject to the oversight of the Regulator to ensure that the governance deficiency is ameliorated steadily in accordance with the plan. In no event shall such amelioration be allowed to continue with any ongoing deficiency beyond six months from the date of such notice.
9. Such an order for rehabilitation shall direct the [State or Commonwealth CCRC Regulator] and any successors in office, as rehabilitator, forthwith to take possession of the property of such CCRC and CCAH provider and to conduct the business thereof, and to take such steps toward the removal of the causes and conditions which have made such proceeding necessary as the court shall direct.
10. This Act shall take effect as of January 1, 20??.