

# Preliminary Exposure Draft

## For Comment and Review

### **Text of Model CCRC Nonforfeiture Law**

1. This Law shall be known as “The Continuing Care Retirement Community Nonforfeiture Act” and may be referred to as the CCRC Nonforfeiture Act.
2. The legislature finds that it is desirable that residents of a Continuing Care Retirement Community (CCRC), participants in a Continuing Care At Home (CAAH) program, or others who contract for Continuing Care be treated equitably if their circumstances change requiring them to terminate a contract. The term CCRC, CCRC contract, or CCRC provider shall be construed to include all forms of Continuing Care, including CAAH, unless otherwise indicated by the context.
3. The legislature further finds that many CCRCs require substantial entrance fees often amounting to a major share of an entering Continuing Care Contract-holder’s life savings and that it is, therefore, inappropriate that some people forfeit through no fault of their own a substantial portion of their entrance fees in excess of the value of the services provided.
4. Accordingly, the legislature now enacts this CCRC Nonforfeiture Act to define minimum standards by which terminating Continuing Care Contract-holders can be assured of fair and equitable treatment.
5. The underlying principle for this CCRC Nonforfeiture Act is the same as similar laws applying to comparable transactions in life and annuity insurance. That principle is that any CCRC contracts, governed by the laws of this state, include a provision that terminating Continuing Care Contract-holders shall promptly receive a refund equal to (a) the present value as of the date of termination of future services that they will therefore no longer require, less (b) the present value of future anticipated Net Fees as defined in Section 11 of the CCRC Valuation Act. Since an entrance fee is a prepayment for expected future services, it is appropriate that the unexpended present value related to those future services be returned the contract is terminated thereby relinquishing any future claim to the receipt of the promised services.

6. Accordingly no contract for CCRC services, other than a secondary contract of reinsurance issued to a licensed provider organization, may be delivered or issued for delivery in this state after the effective date of this CCRC Nonforfeiture Act unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the [State or Commonwealth CCRC Regulator] are at least as favorable to the terminating Continuing Care Contract-holder as are the minimum requirements specified in this chapter:

- (1) That, in the event of termination, whether voluntary or involuntary, of a Continuing Care Contract, or of default in any required payment, the CCRC will grant a paid-up nonforfeiture benefit of such amount as may be specified in this chapter.
- (2) The amount of such nonforfeiture benefit may, at the option of the Contract-holder, if living, be used to meet any required payment obligations, enabling the Contract-holder to remain in full compliance with the terms of the contract, or upon proper request not later than sixty days after such default or other contract termination, there shall be payable a cash contract termination benefit which shall be mathematically equivalent to any alternative nonforfeiture benefit. Such mathematical equivalence shall be as proposed by the CCRC provider and approved by the [State or Commonwealth CCRC Regulator].
- (3) The nonforfeiture option shall be for continuation of contract benefits for as long as the nonforfeiture benefit shall permit unless the person entitled to make such election elects another available option not later than sixty days after default or other contract termination.
- (4) That if contract benefits are continued pursuant to this section the CCRC will pay upon a request by the Contract-holder a cash termination value of such amount as may be specified in this Act.

- (5) A statement of the mortality table, long term care contingency table, interest rate, and any other actuarial assumptions used in calculating the cash surrender values and the nonforfeiture benefits available under the contract, together with a table showing the cash surrender value, if any, and paid-up benefit continuation period, if any, available under the contract on each contract anniversary date either during the first twenty contract years or during the term of the contract, whichever is shorter, such values and benefits to be calculated without assumed withdrawal rates upon the assumption that there are no credits to be payable under the contract and that there is no indebtedness to the CCRC on the contract.
- (6) A statement that the cash surrender values and the nonforfeiture continuation benefits available under the contract are not less than the minimum values and benefits required by or pursuant to the law of the state in which the contract is delivered; an explanation of the manner in which the cash surrender values and the nonforfeiture benefits are altered by the existence of any credits or any indebtedness under the contract; if a detailed statement of the method of computation of the values and benefits shown in the contract is not stated therein, a statement that such method of computation has been filed with the [State or Commonwealth CCRC Regulator] of the state in which the contract is delivered; a statement that such statement is publicly available together with a description of the public access process; and a statement of the method to be used in calculating the cash surrender value and nonforfeiture benefits available under the contract on any contract anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the contract.
- (7) The CCRC shall reserve the right to defer the payment of any cash surrender value for a period of six months, but no longer, after demand therefor with surrender of all claims under the contract.

7. Notwithstanding the requirements of this subsection, any CCRC contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the remaining portion of the nonforfeiture continuation benefit is less than the cost of one month of residence or services, or if the residual value of the contract is less than \$1,000, the CCRC may at its option terminate such contract by payment in cash of the then present value of such residual portion of the nonforfeiture continuation benefit, calculated on the basis of the mortality and long term care contingency tables, if any, and interest rate specified in the contract, and by such payment shall be relieved of any further obligation under such contract.
8. The minimum values as specified in this Act shall be based upon minimum nonforfeiture amounts determined as the corresponding reserve value attributable to the contract under the Continuing Care Retirement Community Valuation Act (CCRC Valuation Act), except that the resulting nonforfeiture value need not include allowance for a Contingency Margin for Adverse Deviations.
9. Such minimum values may be reduced by:
  - (1) Any prior withdrawals from the contract accumulated at a rate of interest equal to the reserve interest rates specified by the CCRC Valuation Act for the calendar years in question; and
  - (2) The amount of any indebtedness to the CCRC provider on the contract, including interest due and accrued;
10. Although this CCRC Nonforfeiture Act applies only prospectively to contracts entered into after the effective date of this Act, providers who voluntarily offer existing CCRC contract-holders the option to upgrade to a nonforfeiture contract with suitable upgrade charges may call themselves “fully funded” CCRCs while providers who do not make such an offer can be known as “vacancy funded” CCRCs, in recognition of the partial funding of such old law CCRCs by forfeitures from departing contract-holders.

11. This law shall be effective for all contracts entered into for CCRC services on or after an effective date of January 1, 20??.

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