

LEGISLATIVE UPDATE May 1 2020 . from *Sindy Barker*

There are a lot of things in flux as I write this article. There are issues at both the state and national level which have a real potential of affecting residents' pocketbooks.

- We are awaiting word from Tom Akins, CEO of LeadingAge as to whether we will need to put out a legislative alert on the NC Department of Revenue's interpretation to treat CCRCs as retailers. This would have a significant impact on all community residents.
- Secondly, we have not heard back from CMS on their proposed \$13.68 per day assessment on skilled nursing beds within CCRCs. Depending on the size of a CCRC's health center, this tax could add anywhere from \$100,000 to almost a million in costs to residents.
- Thirdly, the Department of Insurance has been meeting for over a year on a revision of Chapter 58 Continuing Care Retirement Communities.

NC Department of Revenue

In late 2019, one of the CCRCs was asked to meet with the Department of Revenue (DOR) and received the interpretation by the Department that the CCRC was considered a retailer. Therefore, their fees would be subject to a 7.5% sales tax and it would be retroactive for three years. LeadingAge began to look at this interpretation and its implications for all CCRCs in the state. There had been a concern that this interpretation might be included in the COVID-19 bill that was passed on May 2 and signed into law by the Governor on May 4. Tom Akins, CEO of LeadingAge, and Wayne Campbell, President of NorCCRA, wrote a joint letter to Representative Tim Moore, Speaker of the House, and Phil Berger, President of the Senate, asking that the issue be postponed until the 2021 long session.

The General Assembly is due to reconvene on May 18 and again this DOR interpretation may come up for discussion. There are several scenarios that we might encounter. We have listed three possibilities below.

- 1) CCRCs are determined to be retailers and will be taxed accordingly. In this case, NorCCRA will be sending out an urgent legislative alert for all residents to get in touch with their legislators.
- 2) There is not enough information on this DOR interpretation and a study commission or a select committee will be appointed to report back to the 2021 long session. In this case, NorCCRA and LeadingAge would be able to present detailed information about how CCRCs differ from retailers.
- 3) Much of what residents' fees cover are not retail in nature. Rather than each CCRC determining which items on each resident's monthly bill is a retail expense, it might be possible to apply a formula for a "reasonable approximation" which could

mean each resident would be billed a smaller and more manageable percentage of the whole.

Since the Hotline went to press prior to the General Assembly coming back on May 18, you can go to <https://www.norccra.org/legislative.htm> to see the most recent update. In addition, if we need to have you act swiftly, your NorCCRA representatives, officers and members of the Legislative Committee will be in touch with you by email.

Move to Eliminate State Exemption for CMS Bed Tax

Last year the US Centers for Medicare and Medicaid (CMS) published a proposed rule which would allow no exemptions to the bed tax on skilled nursing home beds. The NC legislature has granted exemptions to CCRCs, but would be unable to do so in the future. It is a per night tax of \$13.68 which would be used by each CCRC to calculate the number of “patient per night beds” per year and pay that amount. There was a huge response from residents in states that are exempt. LeadingAge National reports that sometimes a proposed rule isn’t acted on and just drops off the radar. We are hopeful that this bed tax is one of those proposed rules.

CCRC Advisory Committee and Revisions to GS 58-64, CCRC

The nine members of the CCRC Advisory Committee met at the Department of Insurance (DOI) building on March 2. Guests were NorCCRA members: Wayne Campbell, Peggy Campbell and Sindy Barker; and Tom Akins, LeadingAge. Nancy Wise, Manager of Special Entities, gave an overview of the five types of CCRCs which exist in North Carolina. Financial risk shifts from the facility to the resident as the contract type moves from Type A (Life Care) to Type E (Ownership). There is an increasing trend toward for-profit facilities.

The CCRC Task Force within the DOI began meeting in January 2019 to propose revisions to GS 58-64 Continuing Care Retirement Communities to align it with the types of facilities the DOI is now regulating. NorCCRA and LeadingAge have work groups who are also working on the proposed revisions from their association’s perspective. The ultimate goal is to have all three groups reach consensus on any proposed changes before it is introduced in the 2021 long session of the legislature.

At the meeting, DOI distributed a survey form which was designed primarily for management, but Wayne Campbell and the NorCCRA Executive Committee also responded to the survey providing their thoughts on each question from the resident’s point of view.