Minutes, CALCRA Board of Directors Meeting, October 19, 2017
University Retirement Center, Davis, California

Board members in attendance:
    Margaret Griffin, President and Chair Legislation Committee
    Ed Delaney, Vice-President
    Rose Burgis, Secretary
    Linda Saunders, Treasurer
    Bob Googins, Chair, Membership Committee
    Karen Robison, Chair, Governance Committee
    Mary Dougherty
    Charles Greene

Absent With Notice:
    Mike Hernacki
    Len Schneiderman

Guests:
    Evon Lenerd, Chief, Continuing Care Branch, CA Dept. of Social Services
    Craig Lundgren, Attorney, Continuing Care Branch
    Ignacio Hernández, President, Hernández Strategy Group

President Griffin called the meeting to order at 8:25 am. A quorum was present.

The Board acknowledged the following Board Actions taken since its April 2017 meeting:
1. Email vote to approve the minutes of the April, 2017 Board meeting
2. The appointment of Mike Hernacki to the Board for a three-year term

TREASURER’S REPORT, submitted by Linda Saunders
Statement of Income and Expenses as of September 31, 2017 (Attachment A)

BOARD MEMBER & OFFICER INFORMATION
Reelection to present positions for one-year terms:
    Margaret Griffin – President
    Edward Delaney – Vice President
    Linda Saunders – Treasurer

Changes:
    Bob Googins – three-year term renewed
    Rose Burgis – replaced Charles Greene as Secretary
    Karen Robison – retired

There is a need for additional Board members

COMMITTEE REPORTS

Executive Committee – Margaret Griffin
Matters discussed in two separate conference calls:
    Electronic version of newsletter
    Mailing list brokers
    Goal of retaining funds equal to one-year's expenditures as a budgetary cushion
    Raising dues (dependent on membership drives)

Other: $5,000 in donations is in line with donations received in previous years.

Governance Committee – Karen Robison
Matters discussed:
    Possibility of Bylaws revision
    Orientation binder for new Board members
New committee members:
  Mary Dougherty
  Mike Hernacki will be asked to be on Governance Committee

Membership Committee – Bob Googins
Need to get a foothold in CCRC’s where there are no CALCRA members
Report on current bulk mailing solicitation
    Using a list broker to target three CCRC’s. Depending on results, will consider expanding this effort to other locations.
    Envelope with attention-getting artwork addressed to “CCRC Neighbor”
Inserts:
    A solicitation letter from Margaret
    An application form and return envelope addressed to Margaret
    Invoice for reimbursement of expenses incurred to be submitted by Bob Googins
Broker claims that lists are 90% accurate

Legislative Committee – Margaret Griffin
Report of the Legislative Committee of legislative issues for consideration by CALCRA Board (Attachment B)

PRESENTATION BY EVON LENERD, CHIEF, CONTINUING CARE BRANCH, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (DSS)

Ms. Lenerd, accompanied by Mr. Craig Lundgren, attorney for the Branch, reported on new developments within her department:

1. There is a new database in the first stage of development. It will eventually allow for much greater flexibility in dealing with CCRC issues. Presently, the database can only be accessed through the Department.

2. The Department is working with the Adult and Senior Care Branch to implement AB713.

3. By statute, the Department has the ability to hire outside consultation in support of their efforts to oversee CCRCs. The Branch is currently developing contracts to provide assistance in the areas of marketing and financial oversight. They have revised the scope of work which is intended to increase bidders for these contracts. As with all aspects of Branch operations, these contracts will be financed through the Provider Fee Fund.

4. The Department is in the process of putting together a complaint fact sheet with the goal of providing information to residents as to what to expect and how to proceed, thereby improving the complaint process.

5. The Branch will continue to publish the continuing Continuing Care Contract Statutes (currently known as “The Green Book”). Margaret Griffin’s index will be included. The Department is researching a less expensive way of publishing the book.

Additional Discussion Points:

1. Need for up-to-date instructions for AED (Automated External Defibrillator) equipment. Old website information prevents some CCRC’s from obtaining new user-friendly equipment. Evon will follow up on this issue with the Adult and Senior Care Branch.

2. Greater potential for new database flexibility with the potential of peer connectivity. Evon stressed that would not happen in phase one.

3. DSS has definite limitations in commenting on legislation. The Department is solely focused on implementing the statutes.

4. The insertion of an arbitration clause in CCRC contracts is troublesome. Craig responded that, due to Federal legislation which takes precedence, states have no power and cannot prevent arbitration.
5. DSS has a reputation among residents of favoring providers when considering and making decisions that affect the operation and management of CCRCs. Evon acknowledged this, stating that they strive for a balance.

REPORT – HERNÁNDEZ STRATEGY GROUP – IGNACIO HERNÁNDEZ, PRESIDENT

Ignacio focused on the passage of AB 713. As the lobbyist for CALCRA he was able to put all issues on the map in the capitol. Requests from DSS for amendments were the main issue dealt with in moving this bill forward. The governor’s office was cooperative. Compromise led to success.

Other: CANHR (California Advocates for Nursing Home Reform) is organizing an initiative to address multiple issues for CCRC’s. Three years ago they led a similar effort, known generally as the RCFE (Residential Care Facilities for the Elderly) Reform Act, which was a series of several bills that dealt with the operations of RCFEs. CALCRA is working with CANHR in the development of this project.

NEW BUSINESS

1. The suggestion to consider appointing a representative to the office of the Attorney General was considered and rejected.

2. Residents have repeatedly requested more current comparisons of monthly fee increases. DSS currently maintains reports on their website covering this information, but it is old, being taken from providers’ annual reports of previous year's financial performance. It was concluded that CALCRA does not have the resources to survey all CCRCs and provide this data.

NEXT MEETING

The next Board meeting will be in Southern California, either April 19 or 26, location to be decided.

Meeting adjourned.

Respectfully submitted,

Rose Burgis, Secretary
CALCRA

Statement of Income and Expenses

As of September 31, 2017

Revenue/Income:

Income from Dues $26,829.00
Income from Donations 4,900.00
Total Revenue/Income $31,729.00

TOTAL CASH RECEIVED IN 2017 $31,729.00

Expenses:

Hernandez Strategy Group $ 24,750.00
Gavilan Printers (Newsletter) 4,889.00
All Cal. Insurance 800.00
State Franchise Tax 10.00
Supplies & Bank Fees 99.00
Editing (Newsletter Murphy) 450.00
Marketing 526.00
Postage 98.00
Mixto Communications 2,187.00
Board Expenses:

Board Meetings 1,085.00
President Marketing/Travel 1,877.00
Board Member Travel 632.00

Total Expenses $37,403.00

TOTAL INCOME/LOSS $ 5,674.00

CALCRA Net Loss as of September 31, 2017 is $5,674. Our Cash balance at January
1, 2017 was $50,773 our Cash balance at March 31, 2017 is $45,099.
CALCRA Economic Forecast for the Year End - 2017
Current Economic Data as of September 31, 2017

Economic Data thru September 31, 2017:
- Imports: September increase 0.6%
- Exports: September increase 0.6%
- Producer Price Index: September increase 0.4%
- Consumer Price Index: September increase 0.5%
- Inflation: September increase 1.9% year over year increase of 2.2%
- Hourly Earnings: September decrease 0.1% year over year an Increase of 0.7 cents

Revenue/Expenses 2017:
Our Revenue thru September of 2017 is $31,729 which is $4,324 greater than last year. If our Revenue for the rest of 2017 equals the Revenue for the same time period in 2016 we will have year-end Revenue of $55,674. If the forecast for the rest of the year holds we will have a small profit of $3,365 instead of the loss of $6,171 last year.

2017 remains a difficult year to forecast. We have seen the results of current trade policy’s increase the price of lumber from Canada. Paper prices have increased which effects Newsletter Printing. Inflation increased in the first Quarters and seems to be decreasing as 2017 moves to a close. I have increased the expenses some but I won’t be surprised if they increase further. It is worth mentioning that if the medical deduction is taken away in the tax bill then CCRCs who depend on a large tax deduction may need to rethink their business model.

2017
- September $31,729.00
- October 2016 7,080.00
- November 8,070.00
- December 8,795.00

Estimated Total 2017 $55,674.00

Estimated Expenses:
- Hernandez Strategy Group $33,000.00
- Gavilan Printers (Newsletter) 6,589.00
- All Cal Insurance 800.00
- St. Franchise Tax 10.00
- Supplies 100.00
- Editing 450.00
- Marketing 1,050.00
- Postage 100.00
- Mixto Communications 2,200.00
- Board Expenses:
  - Board Meetings 2,200.00
  - President Marketing/Travel 2,300.00
  - Board Travel 1,500.00

Estimated Total 2017 $50,299.00

This will give CALCRA an INCOME/LOSS IN 2017 of: Estimated Income $3,365.00
1. Prohibit transfers of funds from the provider entity for any purpose other than for the benefit of residents (e.g., direct services, capital expenses, expansion, major remodeling) and, for for-profit CCRCs, distribution of profit.

2. State in statute that providers have a fiduciary duty to residents. Recognizing that resident agreements are contracts of adhesion where the terms and conditions are set by the providers with little or no ability for the potential resident to negotiate more favorable terms results in a power imbalance; also, the increased vulnerability and reduced discernment of many elderly potential residents creates a situation where a higher level of duty should be required of the more powerful party in these matters.

3. For repayable-on-resale contracts, when a resident moves to a higher level of care thereby vacating their original residential unit, the provider shall upon resale of that original unit place in trust at least sufficient proceeds for eventual repayment of the resident who has surrendered their unit to move to a higher level of care. The amount of any financial support from the community received by the resident shall be deducted from the amount placed in trust.

4. Transfer financial oversight CCRCs currently conducted by the Continuing Care Contracts Branch from the Dept of Social Services to the Dept of Insurance.

5. Require periodic (every 3-5 years) actuarial studies for all CCRCs (not just for those that offer “life care” or “Type A contracts”) including a corrective action plan if necessary, and require all CCRCs obtain a periodic (every 3-5 years) maintenance and replacement study performed by a qualified external engineering firm.

6. Non-profit governance issues:
   - Require that all non-profit CCRC board meetings and board committee meetings, excluding executive sessions, be open to residents, and that notices of board meetings and the agenda be distributed to all residents.
   - Require that all non-profit CCRC boards have an Audit Committee consisting of independent directors or trustees.
   - Require that all non-profit boards have a Nominating Committee consisting solely of independent directors or trustees.
   - Require a self-evaluation of non-profit boards annually and that the evaluation be made available to residents.

7. IRS Ruling 72-124, which established the charitable, tax-free status of non-profit CCRCs, requires that they be operated at the lowest feasible cost. Require that the provider’s board, annually, determine that this requirement is met and make the basis for that conclusion available in writing to residents. Require that the non-profit provider’s mission statement include: “operate at the lowest feasible cost.”

8. Require management to make available to residents quarterly, a written notice of formal complaints or concerns filed by the Resident Council with management, and all complaints filed with the board, or DSS; how the complaints were resolved; when any remaining unresolved matters will be settled, and include data on litigation costs and an explanation of the nature of legal matters in dispute.

9. Require that provider investment policies are clearly articulated in writing and available to residents. For non-profit CCRCs, require that residents are provided annually with an evaluation of the composition and performance of its portfolio of investments relative to financial markets.

10. In the event of bankruptcy, receivership or liquidation proceedings against a provider, all continuing care contracts executed by a provider shall be deemed preferred claims against all assets owned by the provider; however, such claims are subordinate to any secured claim. If a licensed facility files for
bankruptcy under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. chapter 11, the facility, in its required filing of the 20 largest unsecured creditors with the United States Trustee, shall include the name and contact information of a designated resident selected by the residents’ council, and a statement explaining that the designated resident was chosen by the residents’ council to serve as a representative of the residents’ interest on the creditors’ committee, if appropriate.

11. For “life-care” CCRCs, require that reserves are established and sufficient to fund obligation to provide life-time health care. Also require that actuarial studies be completed every 3 years (not 5 years as currently specified 1792.10); and require that the actuarial study be constructed to determine and report whether or not reserves are sufficient for the provider to fulfill its obligation to provide life-time health care as set forth in its resident contracts.

12. If the Department determines through a review of occupancy and other financial performance data that a facility is in financial distress, the provider of that facility shall propose a remediation plan to improve the facility’s financial health. This plan shall be submitted to the Department for approval and, once approved, distributed to the facility’s resident council and to prospective residents. The provider shall file progress reports on a schedule established by the Department, but no less than quarterly. Progress reports will also be distributed to the facility’s resident council. (Current language at §1793.13 requires a plan to address financial deficiencies, but does not mention progress reports nor address notifying the resident council.)

13. Increase the requirement for an operating expense reserve from 75 to 180 days (1792.4 (a)).

14. Change the name of the Provider Fee Fund (1778) to “CCRC Oversight Fund”. Instead of specifying a limit on the fund (currently $500K), limit the Fund to the amount necessary to cover one year’s expenses; if a surplus develops that exceeds the statutory limit for 2 consecutive years, the Dept shall evaluate the appropriateness of changing the fee structure rather than mandating fees must be reduced (1778 (c) ). Also direct that fines and civil penalties be deposited into this fund. The approved budget for the Branch shall be posted on the DSS website.

15. The results of the biennial resident satisfaction survey shall be posted on the provider’s website (current statute requires that it “be posted in a conspicuous location at each facility”).

NOTE: In addition to the issues identified above, each CALCRA board member is encouraged to organize a meet-your-legislator activity during the month of December when the state legislature is in recess and lawmakers are back in their local districts.