

HOUSE BILL REPORT

HB 2726

As Reported by House Committee On:
Health Care & Wellness
Appropriations

Title: An act relating to the regulation of continuing care retirement communities.

Brief Description: Concerning the regulation of continuing care retirement communities.

Sponsors: Representatives Walkinshaw, Tharinger, Senn, Cody, Ortiz-Self, Magendanz and Goodman.

Brief History:

Committee Activity:

Health Care & Wellness: 1/26/16, 2/5/16 [DPS];

Appropriations: 2/9/16 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Establishes standards for continuing care retirement communities (CCRCs) to become registered with the Department of Social and Health Services (Department) and specifies registration activities of the Department.
- Requires a CCRC to provide prospective residents with a disclosure statement containing specified information about the CCRC.
- Establishes resident expectations of CCRCs and requirements that copies of the expectations be publicly available.
- Establishes certain violations of the Consumer Protection Act pertaining to CCRCs.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Cody, Chair; Riccelli, Vice Chair; Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Caldier, Clibborn, Jinkins, Moeller, Robinson, Rodne, Tharinger and Van De Wege.

Minority Report: Do not pass. Signed by 2 members: Representatives Johnson and Short.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 1 member: Representative DeBolt.

Staff: Chris Blake (786-7392).

Background:

Continuing Care Retirement Communities.

Continuing care retirement communities (CCRCs) offer a mix of residential options designed to allow older adults the ability to remain in the same community as their health needs change. Each CCRC offers different services to residents, but they include independent living, assisted living, and, in many cases, skilled nursing. While CCRCs are not a regulated entity in Washington, any assisted living component or skilled nursing component must meet state licensing standards for those types of facilities.

Payment arrangements vary among CCRCs, but residents typically pay for the residence and the services through a combination of an entrance fee and a monthly fee. Contracts with CCRCs range from contracts that include housing, residential services, amenities, and unlimited access to health care at little or no increase in the monthly fees at different levels of service to contracts that include housing, residential services, and amenities, but charge residents the market rate for health services. Other arrangements with residents may dispose of entrance fees and charge residents a fee based on the services and care provided.

Disclosures and Residential Rights in Long-Term Care Facilities.

Each resident of an assisted living facility, adult family home, or state veterans' home in Washington must be informed, orally and in writing, of his or her rights in a language that the resident understands. The notification must occur prior to the resident's admission to the facility and the resident must acknowledge receipt of the information.

The rights generally pertain to access to records, personal privacy, freedom from physical or chemical restraint, management of financial affairs, the statement of grievances, access to advocacy resources, and examination of facility survey and inspection results. The facility must also disclose certain quality-of-life rights such as choice of activities and health care, interactions with others, clothing choices, planning for care and treatment, and participation in resident groups. The facility must also disclose its service capabilities to potential residents and attempt to avoid involuntary transfers and, if transfer is necessary, notify the resident of the reason for the transfer. In addition, facilities must disclose the amounts of any admissions fees, deposits, prepaid charges, or minimum stay fees and what portion of such payments will be refunded.

Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce directly or indirectly affecting the people of Washington. The CPA allows a person injured by a violation of the act to bring a private cause of action for damages.

In addition, the CPA allows the Attorney General to bring a CPA action in the name of the state or on behalf of persons residing in the state. In an action brought by the Attorney General, the prevailing party may, in the discretion of the court, recover the costs of the action and reasonable attorneys' fees.

Summary of Substitute Bill:

Certification of Continuing Care Retirement Communities.

The term "continuing care" means housing and care provided upon payment of an entrance fee and under a residency agreement. The term "care" includes nursing, medical or other health-related services; protection or supervision; assistance with activities of daily living; or any combination of these. "Continuing care retirement communities" (CCRCs) are defined as entities that agree to provide continuing care to a resident under a residency agreement. The term does not include assisted living facilities if they do not provide skilled nursing services, either directly or through contract.

An entity must be registered by the Department of Social and Health Services (Department) as a CCRC if it: (1) operates a CCRC; (2) enters into residency agreements with prospective residents; (3) solicits an application fee or residency agreement from a prospective resident; or (4) collects a residency fee.

To become registered as a CCRC, an entity must provide the Department with general information, copies of proposed residency agreements, copies of the CCRC's current disclosure statement, copies of financial statements for the previous three years, an attestation that the CCRC is in compliance with disclosure statement notification requirements, and payment of a fee. For newer CCRCs with a limited financial history, the financial statement requirement may be satisfied by submitting either copies of an independent accountant's report opinion letter that has evaluated the financial feasibility of the CCRC, or a summary of the actuarial analysis stating that the CCRC is in satisfactory actuarial balance. The Department is authorized to conduct several regulatory activities, including issuing registrations, reviewing disclosure statements for completeness, adopting fees, and establishing an online listing of the names and addresses of registered CCRCs.

Disclosure Statements and Resident Rights.

Prospective residents must be provided with a copy of the CCRC's current disclosure statement prior to entering into a residency agreement or accepting an entrance fee. The disclosure statement must include:

- the names of the owners and officers;
- the type of ownership;
- persons with at least a 10 percent ownership in the CCRC;
- general descriptive information, including the number of living units, number of assisted living and nursing home beds, occupancy rates, and other care facilities owned or operated by the owner of the CCRC;
- an explanation of the CCRC's policy regarding placement in off-campus assisted living facilities and nursing homes, and the payment responsibilities of the CCRC and the resident in the event of such a placement;

- the number of residents placed off-site for assisted living and nursing care services in the previous three years due to a lack of capacity at the CCRC;
- an explanation of all types of fees charged, how each type of fee is determined, current fee ranges, and fee refund policies;
- the CCRC's policy for notifying residents of fee increases;
- the CCRC's policy related to changes in levels of care and any associated fees;
- the CCRC's policy for the termination of a contract, including the return of any fees or deposits;
- a description of services provided under residency agreements, including the extent to which medical care and long-term care services are provided, and where medical care and long-term care services are provided, if not provided on the CCRC campus;
- a description of the services made available by the CCRC for an additional charge; and
- the two most recent annual audited financial statements, or, for newer CCRCs with a limited financial history, either copies of an independent accountant's report opinion letter that has evaluated the financial feasibility of the CCRC or a summary of the actuarial analysis stating that the CCRC is in satisfactory actuarial balance.

Continuing care retirement communities must provide prospective residents with a list of resident expectations. In addition, each CCRC must make the resident expectations publicly available as well as a statement of the right to file a complaint with the Attorney General.

The expectations include:

- the opportunity to comment on decisions affecting the resident's health, welfare, and financial security;
- transparency regarding the financial stability of the provider operating the facility;
- timely notifications of developments affecting the facility, such as change of ownership, change in the financial condition of the provider, and construction and renovation at the facility;
- reasonable accommodations for persons with disabilities;
- the opportunity to organize and participate in independent resident organizations;
- clear and complete written contracts; and
- the ability to make donations to the CCRC or purchase products from the CCRC on a voluntary basis.

Prospective residents may visit each of the different levels of care and inspect credentialing reports prior to signing a residency agreement.

Enforcement.

Consumer Protection Act violations are created for operating as a CCRC without registration, representing an entity as a CCRC without being registered, failing to comply with delivery and content requirements for disclosure statements, and failing to comply with resident expectations.

Substitute Bill Compared to Original Bill:

The substitute bill excludes assisted living facilities from the definition of "continuing care retirement communities" (CCRCs) if they do not provide skilled nursing services directly or through contract. Deposits of \$10,000 or less, or amounts based on rental or lease payments

are removed from the definition of an "entrance fee." A "prospective resident" is defined as a person who has completed an application for admission to a CCRC and made a deposit to reserve a unit.

The substitute bill requires entities to be registered, rather than certified, as CCRCs. The same application requirements remain, except that the survey requirement is removed and an attestation that the CCRC is in compliance with disclosure notification requirements is added. New CCRCs with a limited financial history may comply with the audited financial statement requirement by submitting either copies of an independent accountant's report opinion letter that has evaluated the financial feasibility of the CCRC, or a summary of the actuarial analysis stating that the CCRC is in satisfactory actuarial balance. The role of the Department of Social and Health Services (Department) is limited to reviewing the application for completeness of materials. The Department must issue the registration within 60 days of receipt of an application. The Department must maintain an online listing of the names and addresses of registered CCRCs.

The substitute bill adds disclosures to prospective residents to include: (1) an explanation of policies regarding placement off-campus and the associated payment responsibilities; (2) the policy related to changes in levels of care and any related fees; and (3) policies related to termination of the contract, including the return of payments. The CCRCs must disclose two years of audited financial statements, instead of one year. New CCRCs with a limited financial history may disclose, instead of two years of audited financial statements, either copies of an independent accountant's report opinion letter that has evaluated the financial feasibility of the CCRC or a summary of the actuarial analysis stating that the CCRC is in satisfactory actuarial balance.

The substitute bill recharacterizes the "rights" that the CCRC provide each prospective resident as "expectations." The rights related to the physical, social, and intellectual elements of the environment; communications with CCRC management; management of one's financial affairs; and the maintenance of ties to the community are removed. Expectations are added related to the opportunity to comment on decisions affecting the resident's health, welfare and financial security; transparency regarding the financial stability of the provider operating the facility; timely notification of developments affecting the facility; and reasonable accommodations for persons with disabilities. The expectations must be publicly available to residents and visitors.

The substitute bill specifies that CCRC regulations do not apply to nursing home or certificate of need program provisions.

The substitute bill prohibits entities that are not registered as CCRCs from representing themselves, or referring to themselves in advertising or marketing materials as "registered CCRCs" or "CCRCs."

The substitute bill establishes a Consumer Protection Act violation for any entity: (1) operating as a CCRC without registration; (2) representing itself as a CCRC without being registered; (3) failing to comply with delivery and content requirements for disclosure statements; (4) and failing to comply with resident expectation requirements.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2017.

Staff Summary of Public Testimony:

(In support) There is a lot to like about the continuing care retirement community (CCRC) model and the state should find ways to expand and make the model available to more seniors. The CCRCs are wonderful places to live, but residents may encounter some surprises when they move in. This bill enhances the CCRC model for others in the future. There are about 25 CCRCs in the state that are typically serving 300 to 600 residents each and they do not all have the same financial transparency requirements. Residents invest a significant amount of their own assets in these communities and this bill provides more transparency about the CCRCs' financial management.

The disclosure statements will minimize the risks to seniors in CCRCs. The requirement to disclose services available at the CCRC for an additional charge will allow seniors on a fixed-income to know what the total costs they will incur as they go through the continuum of care. Residents spend a lot of money with certain expectations and are sometimes met with unanticipated developments that management should have disclosed prior to the execution of a residency agreement. The CCRC boards have used resident funds to build other facilities, rather than for life care, without ever consulting the residents. Management and the board should communicate better with the residents and allow them to participate in decision making. This bill will require CCRCs to disclose their actual experience of no vacancy rates in assisted living and skilled nursing units which has been a problem for some residents in need of additional services. There needs to be mandatory disclosure of measurable things such as services, charges, and the annual count of no-vacancy occurrences.

The certification requirement will protect CCRC residents, especially those in independent living. Requiring CCRCs to provide the Department with residency agreements, disclosure statements, and audited financial information will make these documents publicly disclosable. The ability to submit complaints to the Department gives residents of CCRCs a voice that they do not currently have.

This bill removes uncertainty for residents by providing them with a copy of their rights at the time they move in or change care levels and that the rights be posted. The resident rights apply to all members of the CCRCs just as residents in assisted living and skilled nursing have rights.

Even experienced, well-educated people can have a hard time understanding the contents of residency agreements. Some residency agreements have subordination clauses that residents should be aware of and do not specify the provision of basic services.

(Opposed) None.

(Other) This bill is largely about providing certain information and notice of certain rights which is already happening in CCRCs on a voluntary basis. The definition of "CCRCs" is overly broad and could unintentionally bring in some assisted living facilities that are not operating as CCRCs. There should be a Consumer Protection Act provision for those communities that market themselves as CCRCs without actually becoming certified to reduce consumer confusion and protect against unfair and deceptive business practices. This bill opens the door to the Department interfering in the contractual rights between private parties and the bill should affirmatively state that the Department has no authority to approve or modify contracts. Independent living residents are not vulnerable adults requiring protection, yet the bill gives the Department broad authority to survey and investigate matters involving independent residences. The Department authority over independent residences should be limited to determining whether disclosures were provided and notice of rights were issued. The bill requires duplicative surveys. There will be significant costs to implement this bill and it will have to be borne by the residents. The costs can be reduced by limiting the authority of the Department or extending the certification process. The bill needs an adjudicative process for appealing decisions of the Department. The bill's sanctions are excessive and should instead use plans of correction and civil monetary penalties. There will be substantial costs to pay for the certification.

Persons Testifying: (In support) Representative Walkinshaw, prime sponsor; Jim McClaine and Bill Franz, National Continuing Care Residents Association of Washington; Keith Gilbert; Barb Williams; and Liz Tidyman.

(Other) Deb Murphy, LeadingAge Washington; and Dale Robin, Washington Health Care Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 31 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Cody, Condotta, Dent, Fitzgibbon, Haler, Hansen, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Robinson, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Tharinger, Van Werven and Walkinshaw.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Mary Mulholland (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The Department of Social and Health Services (Department) is directed to inform a continuing care retirement community (CCRC) applicant if its application is incomplete, and to give the CCRC an opportunity to supplement its submission. Applicants denied CCRC registration by the Department are permitted to appeal the Department's decision. The validity of a CCRC registration is extended from one year to two years. Application materials for CCRC registration are exempt from public disclosure. It is clarified that the Department's CCRC registration activities are limited to reviewing applications for completeness, and do not signify that the Department has otherwise certified or licensed the CCRC.

The application of the Consumer Protection Act (CPA) to CCRCs is limited to cases in which there is a pattern of complaints or activity that likely establish an unfair or deceptive act or unfair method of competition, except for violations of title protection and failure to register, in which case it is not required that a pattern be established. The Attorney General is directed to provide notice to the management of a CCRC when a CPA complaint is submitted so that the CCRC can take corrective action.

When notifying residents of developments affecting the facility, a CCRC is permitted to deem certain information confidential if its disclosure would materially harm the position of the CCRC.

The expectation that CCRC residents have a clear and complete written contract is removed and replaced with the expectation that CCRC residents have the opportunity to seek independent counsel review of all contracts prior to executing the residency agreement. The expectation that donations are voluntary and are not a condition of residency is clarified and a reference to provider-sponsored financial products is removed. The expectation that CCRC residents have the opportunity to comment in decisions affecting residents' health, welfare, and financial security is removed.

Audited financial statements for CCRC registration applications and disclosures must have been prepared no more than 18 months, rather than no more than 16 months, prior to the date the CCRC applied for its current registration.

It is clarified that the term "prospective resident" applies to one who makes a refundable deposit to reserve a CCRC unit, excluding applicable administrative fees.

It is specified that the provisions of the bill apply prospectively after the effective date of the act.

Finally, technical and clarifying changes are made.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 10, 2016.

Effective Date of Second Substitute Bill: The bill takes effect on July 1, 2017.

Staff Summary of Public Testimony:

(In support) One private citizen's experience is informed by her parent's experience as shoppers and consumers in the CCRC landscape. While the proposed second substitute bill has not yet been read, there is support for the bill.

It is thought that all parties have reached compromise on the language before the Appropriations Committee. Disclosure and transparency will be provided to CCRC residents and potential residents, CCRC resident expectations are defined, and CPA violations are appropriately established. There is one small recommendation for an amendment to the proposed second substitute bill. It is recommended that title protection violations and failures to register as a CCRC be exempt from the requirement that there be a pattern of complaints in order for the CPA to apply.

(Opposed) None.

(Other) The Department supports the concept of providing adequate information to individuals who are considering entering a CCRC, but have some concerns about language in the proposed second substitute bill. The Department has no authority to do anything if it has concerns about information or accuracy in a CCRC registration application. Denial of a CCRC registration application is still tied to completeness. It appears that CCRC residents living in assisted living and nursing home settings are excluded from the notification expectations around financial stability and changes in ownership. There is also concern about language that appears to allow for exclusion of information from the CCRC registration application. There are fiscal impacts. The Department is committed to continuing work on the bill.

Persons Testifying: (In support) Liz Tidyman and Deb Murphy, Leading Age Washington.

(Other) Candace Goehring, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.