

SENATE BILL REPORT

2SHB 2726

As of February 29, 2016

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

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

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Walkinshaw, Tharinger, Senn, Cody, Ortiz-Self, Magendanz and Goodman).

Brief History: Passed House: 2/12/16, 83-13.

Committee Activity: Health Care: 2/23/16, 2/25/16 [DP-WM].

Ways & Means: 2/29/16.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Cleveland, Ranking Minority Member; Angel, Bailey, Brown, Conway, Frockt, Jayapal, Keiser, Parlette and Rivers.

Staff: Kathleen Buchli (786-7488)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Mark Eliason (786-7454)

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

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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 Bill: Registration of Continuing Care Retirement Communities. CCRCs are defined as entities that agree to provide housing and care for a period of more than a year to a resident who pays an entrance fee and signs a residency agreement. CCRCs do 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 two years, an attestation that the CCRC is in compliance with disclosure statement notification requirements, and payment of a registration fee. Application materials are not subject to public disclosure.

The Department must register an entity that submits a complete application, review the entity's disclosure statements, adopt a registration fee that is sufficient to cover the Department's costs association with administering the CCRC registrations, establish an

online listing of the names and addresses of registered CCRCs. The Department's registration activities are limited to reviewing applications for completeness and do not signify that a certification or license has been issued to the entity.

Only those entities that have registered with the Department may represent themselves as "registered continuing care retirement communities" or "continuing care retirement communities."

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 year the CCRC opened, the number of living units, number of assisted living and nursing home beds, average annual occupancy rates for the prior three years for each type of unit or bed, 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 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 before a residency agreement is signed. 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:

- 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. The management of the CCRC may deem information confidential if disclosure would materially harm the position of the CCRC;

- reasonable accommodations for persons with disabilities;
- the opportunity to organize and participate in independent resident organizations;
- the opportunity to seek independent counsel review of all contracts; and
- the assurance that donations made to the CCRC are voluntary and not a condition of residency.

Prospective residents may visit each of the different levels of care and review inspection reports and complaint investigations related to the assisted living and nursing home components of a CCRC 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. The Attorney General must notify the management of the CCRC of submitted complaints to allow the CCRC to take corrective action. For cases involving disclosure statements and failing to comply with residency expectations, the Attorney General must limit the application of the Consumer Protection Act to situations in which there is a pattern of complaints or other activity that likely establishes an unfair or deceptive act in trade or commerce or an unfair method of competition.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Health Care): PRO: Some of these facilities do great work. This bill is the result of stakeholder work to ensure CCRC residents have a better sense of financial information related to the CCRC. It is important to the state that people moving into these facilities have this information. CCRCs may have an assisted living component; they provide a continuum of care. Some residents start in independent living and as their health needs change, they may move to a higher level of health care. One community provides care for life. In the bill, CCRCs must be registered with the Department and the Department must establish an online registry. The disclosure of financial agreements will help establish resident expectations. This will help residents determine if the CCRC is financially stable for the long-term. This bill is a product of compromise and mostly affects those residents who live independently. It sets expectations and includes due process protections. It does allow Consumer Protection Act complaints and we hope that parties choose to resolve differences without implicating the Consumer Protection Act.

OTHER: The Department supports the concept of ensuring that individuals who are considering a CCRC have enough information to make an informed decision. Consumers may not understand that a registration does not ensure a level of quality or that the facilities are not subject to monitoring and oversight by the Department. The Department does not have authority to take enforcement action even if the application is not accurate. The Attorney General's actions under the Consumer Protection Act are limited to conduct that

constitutes a pattern; many consumers may be harmed while the Attorney General is waiting for the pattern to develop.

Persons Testifying (Health Care): PRO: Rep. Walkinshaw, Prime Sponsor; Jim McClaine, National Continuing Care Residents Association, Washington/President; Deb Murphy, Leading Age Washington; Saamuel Beard, National Continuing Care Residents Association; Liz Tidyman; Donald Taves, Emerald Heights.

OTHER: Candace Goehring, Department of Social and Health Services/Residential Care Services.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill regulates the independent living portion of the CCRCs. It reflects a compromise between the CCRCs and residents. It reflects the values and standards of the industry members.

Persons Testifying (Ways & Means): PRO: Deb Murphy, Leading Age Washington.

Persons Signed In To Testify But Not Testifying: No one.