

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2726

64th Legislature
2016 Regular Session

Passed by the House February 12, 2016
Yeas 83 Nays 13

Speaker of the House of Representatives

Passed by the Senate March 1, 2016
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2726** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2726

Passed Legislature - 2016 Regular Session

State of Washington 64th Legislature 2016 Regular Session

By House Appropriations (originally sponsored by Representatives Walkinshaw, Tharinger, Senn, Cody, Ortiz-Self, Magendanz, and Goodman)

READ FIRST TIME 02/09/16.

1 AN ACT Relating to the regulation of continuing care retirement
2 communities; adding a new chapter to Title 18 RCW; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Application fee" means a fee charged to an individual or
9 individuals prior to the execution of a residency agreement, apart
10 from an entrance fee.

11 (2) "Care" means nursing, medical, or other health-related
12 services, protection or supervision, assistance with activities of
13 daily living, or any combination of those services.

14 (3) "Continuing care" means directly providing or indirectly
15 making available, upon payment of an entrance fee and under a
16 residency agreement, housing and care for a period of greater than
17 one year.

18 (4) "Continuing care retirement community" means an entity that
19 agrees to provide continuing care to a resident under a residency
20 agreement. "Continuing care retirement community" does not include an
21 assisted living facility licensed under chapter 18.20 RCW that does

1 not directly, or through a contractual arrangement with a separately
2 owned and incorporated skilled nursing facility, offer or provide
3 services under chapter 74.42 RCW.

4 (5) "Department" means the department of social and health
5 services.

6 (6) "Entrance fee" means an initial or deferred transfer to a
7 continuing care retirement community of a sum of money or other
8 property made or promised to be made as full or partial consideration
9 for acceptance of one or more residents in a continuing care
10 retirement community. "Entrance fee" does not include deposits of ten
11 thousand dollars or less or any amount that is based on rental or
12 lease payments of one month or more.

13 (7) "Prospective resident" means a person who has completed an
14 application for admission to a continuing care retirement community
15 and makes a refundable deposit to reserve a unit, excluding
16 applicable administrative fees.

17 (8) "Residency agreement" means a contract between a continuing
18 care retirement community and a resident for the provision of
19 continuing care for a period of greater than one year.

20 (9) "Resident" means a person who enters into a residency
21 agreement with a continuing care retirement community or who is
22 designated in a residency agreement to be a person being provided
23 with continuing care.

24 NEW SECTION. **Sec. 2.** A person or entity must be registered by
25 the department under this chapter prior to:

- 26 (1) Operating a continuing care retirement community;
- 27 (2) Entering into a residency agreement with a prospective
28 resident;
- 29 (3) Soliciting a prospective resident to pay an application fee
30 or executing a residency agreement; or
- 31 (4) Collecting an entrance fee.

32 NEW SECTION. **Sec. 3.** (1) An applicant for a registration as a
33 continuing care retirement community must submit the following
34 materials to the department:

- 35 (a) A written application to the department providing all
36 necessary information on a form provided by the department;
- 37 (b) Information about the licensed assisted living facility
38 component of the continuing care retirement community and, if the

1 continuing care retirement community operates a nursing home,
2 information about that component;

3 (c) Copies of any residency agreements that the continuing care
4 retirement community intends to use for the certification period;

5 (d) A copy of the disclosure statement that includes current
6 information required by section 6 of this act;

7 (e)(i) Except as provided in (e)(ii) of this subsection, copies
8 of audited financial statements for the two most recent fiscal years.
9 The audited financial statement for the most current period may not
10 have been prepared more than eighteen months prior to the date that
11 the continuing care retirement community applied for its current
12 registration;

13 (ii) If the continuing care retirement community:

14 (A) Has obtained financing, but has been in operation less than
15 two years, a copy of the audited financial statement for the most
16 current period, if available, and an independent accountant's report
17 opinion letter that has evaluated the financial feasibility of the
18 continuing care retirement community; or

19 (B) Has not obtained financing, a summary of the actuarial
20 analysis for the new continuing care retirement community stating
21 that the continuing care retirement community is in satisfactory
22 actuarial balance;

23 (f) An attestation by a management representative of the
24 continuing care retirement community that the continuing care
25 retirement community is in compliance with the disclosure
26 notification requirements of section 6 of this act; and

27 (g) Payment of any registration fees associated with the
28 department's cost of registering continuing care retirement
29 communities.

30 (2) The department shall base its decision to issue a
31 registration on the completeness of the application. If an
32 application is incomplete, the department shall inform the applicant
33 and give the applicant an opportunity to supplement its submission.
34 An applicant may appeal a decision of the department to deny an
35 application for registration.

36 (3) The department shall issue the registration within sixty days
37 of the receipt of a complete application, payment of fees, submission
38 of disclosures, residency agreements, and the attestation. The
39 department's failure to timely issue a registration may not cause a

1 delay in the change of ownership and ongoing operation of the
2 continuing care retirement community.

3 (4) Registration is valid for two years.

4 (5) Registration is not transferable.

5 (6) Materials submitted pursuant to this section are not subject
6 to disclosure under the public records act, chapter 42.56 RCW.

7 NEW SECTION. **Sec. 4.** (1) The department shall:

8 (a) Register an entity that submits a complete application that
9 includes all of the materials required in section 3 of this act;

10 (b) Review the disclosure statements submitted by applicants for
11 an initial or renewal registration to operate a continuing care
12 retirement community for completeness;

13 (c) Establish and collect a fee that is sufficient to cover the
14 department's costs associated with administering the requirements of
15 this chapter; and

16 (d) Create and maintain an online listing that is readily
17 available to the public of the names and addresses of continuing care
18 retirement communities that are registered with the department.

19 (2) The department's registration activities consist of reviewing
20 an application for completeness and do not signify that the
21 department has otherwise issued a certification or license to the
22 continuing care retirement community or any of its component parts.

23 NEW SECTION. **Sec. 5.** An entity that is not registered with the
24 department may not represent itself, or refer to itself in
25 advertising and marketing materials as a "registered continuing care
26 retirement community" or "continuing care retirement community," as
27 defined by this chapter.

28 NEW SECTION. **Sec. 6.** (1) A continuing care retirement community
29 must prepare a disclosure statement that includes the following
30 information:

31 (a) The names of the individual or individuals who constitute the
32 continuing care retirement community and each of the officers,
33 directors, trustees, or managing general partners of the legal entity
34 and a description of each individual's duties on behalf of the legal
35 entity;

36 (b) The business address of the continuing care retirement
37 community;

1 (c) The type of ownership, the names of the continuing care
2 retirement community's owner and operator, and the names of any
3 affiliated facilities;

4 (d) The names and business addresses of any individual having any
5 more than a ten percent direct or indirect ownership or beneficial
6 interest in the continuing care retirement community, the percentage
7 of the direct or indirect ownership or beneficial interest, and a
8 description of each individual's interest in or occupation with the
9 continuing care retirement community;

10 (e) The location and general description of the continuing care
11 retirement community, including:

12 (i) The year the continuing care retirement community opened;

13 (ii) The location and number of living units, licensed assisted
14 living facility beds, and nursing beds considered part of the
15 continuing care retirement community;

16 (iii) The average annual occupancy rate for the prior three
17 fiscal years for each type of unit or bed; and

18 (iv) Any other care facilities owned or operated by the owner of
19 the continuing care retirement community;

20 (f) An explanation of the continuing care retirement community's
21 policy regarding placement in off-campus assisted living facilities
22 and nursing homes and the payment responsibilities of the continuing
23 care retirement community and the resident in the event of off-campus
24 placement;

25 (g) The number of residents who were placed off-site in the
26 previous three years for assisted living and nursing services due to
27 the lack of available capacity at the continuing care retirement
28 community;

29 (h) An explanation of all types of fees charged by the continuing
30 care retirement community, how each type of fee is determined,
31 current ranges for each type of fee, and refund policies for each
32 type of fee;

33 (i) Statements describing the continuing care retirement
34 community's policy for notifying residents of fee increases,
35 including the amount of prior notification that is provided;

36 (j) Statements describing the continuing care retirement
37 community's policy related to changes in levels of care and any
38 associated fees;

1 (k) Statements describing the continuing care retirement
2 community's policy for the termination of a contract, including the
3 return of any fees or deposits pursuant to the residency agreement;

4 (l) A description of services provided or proposed to be provided
5 by the continuing care retirement community under its residency
6 agreements, including:

7 (i) The extent to which care, long-term care, or health-related
8 services are provided. If the services are provided at a facility
9 that is not certified as part of the continuing care retirement
10 community's campus, the disclosure statement must identify the
11 location where the services are provided and any additional fees
12 associated with the services; and

13 (ii) The services made available by the continuing care
14 retirement community for an additional charge; and

15 (m)(i) The continuing care retirement community's two most recent
16 annual audited financial statements prepared in accordance with
17 generally accepted accounting principles by a certified public
18 accountant. The most recently audited financial statement may not
19 have been prepared more than eighteen months prior to the date that
20 the continuing care retirement community applied for its current
21 registration; or

22 (ii) If the continuing care retirement community is new and:

23 (A) Has obtained financing, but does not have two years of
24 audited financial statements as required under (m)(i) of this
25 subsection, an independent accountant's report opinion letter that
26 has evaluated the financial feasibility of the continuing care
27 retirement community; or

28 (B) Has not obtained financing, a summary of the actuarial
29 analysis for the new continuing care retirement community stating
30 that the continuing care retirement community is in satisfactory
31 actuarial balance.

32 (2) The disclosure statement must be written in understandable
33 language and a clear format.

34 (3) Prior to entering into a residency agreement with, or
35 accepting an entrance fee from, any prospective resident, a
36 continuing care retirement community must deliver to the prospective
37 resident a copy of the disclosure statement most recently submitted
38 to the department.

1 NEW SECTION. **Sec. 7.** (1) A prospective resident may visit each
2 of the different care levels of the continuing care retirement
3 community, assisted living facility, and nursing home, and may
4 inspect the most recent inspection reports and findings of complaint
5 investigations related to the assisted living and nursing home
6 components covering a period of not less than two years, as
7 available, prior to signing a residency agreement.

8 (2) All residents of a continuing care retirement community in a
9 living unit that is not used exclusively for assisted living or
10 nursing services have the following expectations:

11 (a) Transparency regarding the financial stability of the
12 provider operating the facility;

13 (b) Timely notifications of developments affecting the facility,
14 including ownership changes of the provider operating the facility, a
15 change in the financial condition of the provider operating the
16 facility, and construction and renovation at the facility. The
17 management of the continuing care retirement community may deem
18 certain information to be confidential if it is of a sensitive nature
19 such that disclosure of the information would materially harm the
20 position of the continuing care retirement community;

21 (c) Reasonable accommodations for persons with disabilities;

22 (d) The opportunity to participate freely in the operation of
23 independent resident organizations and associations;

24 (e) The opportunity to seek independent counsel review of all
25 contracts, including residency agreements, prior to executing the
26 residency agreement; and

27 (f) The assurance that all requests for donations, contributions,
28 and gifts, when made by residents to the continuing care retirement
29 community, are voluntary and may not be used as a condition of
30 residency.

31 (3) The continuing care retirement community shall:

32 (a) Provide a copy of the expectations specified in this section
33 to each prospective resident prior to signing a residency agreement;
34 and

35 (b) Make copies of the expectations specified in this section
36 publicly available in areas accessible to the independent residents
37 and visitors. The copies of the expectations must also state that
38 independent residents have the right, as an affected party, to file a
39 complaint with the attorney general for violations of this chapter
40 that may constitute a violation of the consumer protection act and

1 contain information explaining how and where a complaint may be
2 filed.

3 NEW SECTION. **Sec. 8.** (1) The legislature finds that the
4 violation of the title protection requirements of section 5 of this
5 act, the failure of a continuing care retirement community to
6 register with the department under section 2 of this act, the failure
7 of a continuing care retirement community to comply with the
8 disclosure statement delivery and content requirements under section
9 6 of this act, and the failure of a continuing care retirement
10 community to comply with the resident expectations established under
11 section 7 of this act are matters vitally affecting the public
12 interest for the purpose of applying the consumer protection act,
13 chapter 19.86 RCW. A violation of the title protection requirements
14 under section 5 of this act, registration requirement under section 2
15 of this act, the disclosure statement delivery and content
16 requirements under section 6 of this act, and the resident
17 expectations requirements under section 7 of this act are not
18 reasonable in relation to the development and preservation of
19 business and are an unfair or deceptive act in trade or commerce and
20 an unfair method of competition for the purpose of applying the
21 consumer protection act, chapter 19.86 RCW.

22 (2) The attorney general shall provide notice to the management
23 of the continuing care retirement community of submitted complaints
24 including the name of the complainant to allow the community to take
25 corrective action. Except for violations of the title protection
26 requirements of section 5 of this act and the failure of a continuing
27 care retirement community to register with the department under
28 section 2 of this act, the attorney general shall limit its
29 application of the consumer protection act in subsection (1) of this
30 section to those cases in which a pattern of complaints, submitted by
31 affected parties, or other activity that, when considered together,
32 demonstrate a pattern of similar conduct that, without enforcement,
33 likely establishes an unfair or deceptive act in trade or commerce
34 and an unfair method of competition.

35 NEW SECTION. **Sec. 9.** Nothing in this chapter:

36 (1) Affects any of the requirements and standards associated with
37 a license to operate an assisted living facility under chapter 18.20
38 RCW or a nursing home under chapter 18.51 RCW; and

1 (2) Applies to any of the provisions of chapter 74.46 or 70.38
2 RCW.

3 NEW SECTION. **Sec. 10.** The provisions of this chapter apply
4 prospectively to acts and omissions that occur after the effective
5 date of this section.

6 NEW SECTION. **Sec. 11.** This act takes effect July 1, 2017.

7 NEW SECTION. **Sec. 12.** Sections 1 through 10 of this act
8 constitute a new chapter in Title 18 RCW.

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