HOUSE BILL REPORT
E2SHB 1296

As Passed House:
March 8, 2019

Title: An act relating to continuing care retirement communities.

Brief Description: Concerning continuing care retirement communities.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Macri, Goodman, Appleton, Cody, Thai, Tharinger and Springer).

Brief History:
Committee Activity:
Health Care & Wellness: 2/6/19, 2/15/19 [DPS];
Appropriations: 2/27/19, 2/28/19 [DP2S(w/o sub HCW)].
Floor Activity:
Passed House: 3/8/19, 55-41.

Brief Summary of Engrossed Second Substitute Bill

- Establishes additional registration requirements for continuing care retirement communities (CCRCs) related to submitting actuarial reports and service and care agreements.
- Requires CCRC disclosure statements to include information related to the payment of management fees and, for certain CCRCs, an actuarial summary of the CCRC's most recent actuarial report.
- Expands the expectations of residents of CCRCs to include standards related to agreements with management companies and the refund of entrance fees.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Cody, Chair; Macri, Vice Chair; Davis, Harris, Jinkins, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers.

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).

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 19 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

Staff: Mary Mulholland (786-7391).

Background:

Continuing care retirement communities (CCRCs) are entities that provide care and housing to residents under a residency agreement that lasts for longer than a year. Care services may include nursing care, medical care, assistance with activities of daily living, and protection or supervision.

Since July 1, 2017, CCRCs have been required to register with the Department of Social and Health Services. To become registered, an applicant must submit information about the assisted living and nursing home components of the CCRC, copies of residency agreements, a copy of the current disclosure statement, copies of audited financial statements, and an attestation that the CCRC is in compliance with disclosure notification requirement. Disclosure requirements for prospective residents include information about the ownership; descriptive information about the facilities; policies regarding notifications of fee increases, changes in levels of care, and contract termination; a description of standard and supplemental services; and the most recent audited financial statements.

Residents of CCRCs are afforded several expectations that a CCRC must fulfill. These expectations include transparency in the financial stability of the facility, timely notification of developments affecting the facility, reasonable accommodations for persons with disabilities, the opportunity to participate in resident organizations, the opportunity to seek independent review of contracts and agreements, and the assurance that donations made by residents to the CCRC are voluntary.

Summary of Engrossed Second Substitute Bill:

<u>Type A Contracts</u>.
A "Type A contract" is defined as a care contract that includes housing, residential services, amenities, and unlimited, specific health-related services with periodic payments, subject to

specific adjustments, as well as an entrance fee. Health-related services may include services provided by assisted living facilities, nursing homes, or in-home services agencies.

Application to Become a Continuing Care Retirement Community.
Applicants for registration with the Department of Social and Health Services (Department) as a continuing care retirement community (CCRC) must submit copies of any service or care agreements used for nonindependent residents. Agreements must be clear and complete and detail the mutual expectations and obligations of the resident and the CCRC.

Applicants for registration as a CCRC must also submit a copy of the CCRC's most recent actuarial report if the applicant either: (1) offers, or plans to offer, Type A contracts; or (2) does not offer Type A contracts, but has obtained an actuarial report within the previous three years. The actuarial report must have been prepared within three years of the date of the CCRC's application for its current registration. The date for submitting an actuarial report may be extended up to five years if the CCRC's most recent financial statement shows a surplus and the CCRC's three most recent financial statements show positive operating earnings.

Continuing Care Retirement Community Disclosure Statements.
For fiscal years ending on or after December 31, 2019, CCRC disclosure statements must include whether, and in what manner, funds have been set aside for reserves or other contingent liabilities. In addition, if a management company controls the CCRC, the financial statements must disclose:

- the dollar amount of management fees paid by resident fees and expended by the management company to provide management services and products for the CCRC;
- the dollar amount of management fees paid by the management company to entities controlled by the management company to provide management services or products for the CCRC, including the names of the entities; and
- the amount and terms of any outstanding loans from the CCRC to the management company or any entity controlled by the management company.

Disclosure statements for CCRCs must also include an actuarial summary of the CCRC's most recent actuarial report, including material actuarial assumptions, if the CCRC either: (1) offers Type A contracts; or (2) does not offer Type A contracts, but has obtained an actuarial report within the previous three years. Residents and prospective residents of the independent living portion of the CCRC may receive a copy of the most recent full actuarial report by submitting a written request. The CCRC shall redact any personal financial or health care information before providing the full actuarial report. A resident or prospective resident that receives the full actuarial report may only disclose it to other residents of the independent living portion of a CCRC and their legal, financial, and actuarial advisers.

Disclosure statement requirements apply to any entity that manages or operates, or has a significant role in the management or operation of, an entity that agrees to provide continuing care to a resident under a residency agreement.

Continuing Care Retirement Community Resident Expectations.
The expectations of residents of the independent living portion of a CCRC are expanded to include the expectation to be able to participate in significant decisions affecting the

resident's health, welfare, and financial security. Management retains its decision-making authority as provided in the residency agreement and applicable law. In addition, residents may expect that all agreements and transactions between the CCRC and a management company that controls the CCRC shall be priced at or below fair market value, be in the best interests of residents, and not substantially limit the CCRC's ability to exercise its rights under any agreement.

Residents may also expect residency agreements that provide for refundable entrance fees to assure that any refund due to a resident that leaves a unit shall be based on the entrance fee that the resident provided. A resident may expect that refunds of the entrance fees will be available if the resident physically leaves the CCRC or dies. Once five years have passed from the issuance of a certificate of occupancy, refunds must be paid no later than the earlier of the thirtieth day after the unit is reoccupied and the resident no longer lives in the CCRC, or two years following the resident's departure or death. Each CCRC must maintain a list of vacant units, the dates on which the units became vacant, and the prices of the units. Current and prior residents of the independent living portion of the CCRC may receive a copy of the list.

Upon request, residents may receive a copy of the current disclosure statement and any agreement most recently filed with the Department.

The CCRC must notify independent residents that audited actuarial evaluations are available within 30 days of delivery to the chief financial officer.

It is specified that, in addition to a resident's right to file a complaint, residents may pursue other legal remedies.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 6, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) This bill is trying to increase disclosure and introduce a mechanism for complaint resolution so that continuing care retirement home (CCRC) residents will feel more secure. This bill will bring more transparency to the CCRC model. This bill will help people feel secure in the investment that they are making in a CCRC. There needs to be more disclosure so residents can be assured that their life savings are secured. While no CCRC in Washington has failed resulting in a loss of money for residents, significant losses have been incurred and funding sources have come from outside parties. Residents' fees paid to a management company should be spent on their CCRC. Residents of a CCRC want to know where management funds go within a financial plan. This bill will require CCRCs to disclose whether they have any reserves so prospective residents can determine the suitability of their investment.

While some facilities do not have to worry about future medical costs, they still have capital costs and this would be covered in an actuarial report. An actuarial report looks out into the future for the physical plant and operational needs based on the future population. Many CCRCs are already required to do actuarial reports because of tax exempt financing. Residents of CCRCs want actuarial reports to make sure that the services that they are paying for now will be there in the future. The CCRC residents want to know what the assumptions are in the actuarial reports. Condominium homeowner associations are required to do periodic reserve studies to see if the monthly fees are adequate and an actuarial report serves the same purpose for a CCRC.

The residents of CCRCs would like to resolve any disputes as amicably as possible and the pilot project with the Long-Term Care Ombuds will do this. Other states have a role for the Long-Term Care Ombuds (LTC Ombuds) in CCRCs. This bill consolidates some of the work that the Long-Term Care Ombuds is already doing in the assisted living and skilled nursing components of CCRCs. The LTC Ombuds is very good at low-level problem resolution. This is a good bill to see if the LTC Ombuds can be useful when CCRC residents have an issue with the ownership or management. Since the LTC Ombuds is funded with state, federal, and local money, the pilot program will not have any cost to CCRC residents. Many seniors feel uncomfortable approaching management with complaints. There is a fear that if a conflict has to go to arbitration, the personal costs to a resident could be substantial. The LTC Ombuds has a calm presence that reduces tension and brings satisfactory solutions without involving attorneys.

(Opposed) While there are worries and fears from some residents about the ability of CCRCs to meet their needs, CCRCs have honored contracts and obligations. The CCRCs have acted responsibly with the overall viability of the community at the center of governance and decision making. While there is support for the general principles of transparency, the bill's details are troubling and may have unintended financial consequences to residents. Most of the information and reporting that this bill will require is already readily available to existing or prospective residents.

Actuarial reports are very complex and preparing a full report to be shared with residents may double the annual costs of the report. The bill's actuarial studies have no value for residents who have contracts to pay as they go and will drive up costs without providing any meaningful information to residents. An actuarial study is a redundant effort and expense for CCRCs that have auditors review and comment on the adequacy of reserves each year. Management operates with a high degree of planning for both current needs and future contingencies. This bill creates an additional layer of bureaucracy by placing an undue burden on the accounting staff.

This bill will increase costs or force a reduction in services. This bill will increase costs because actuarial studies cost $30,000 or more. A small number of CCRC residents from a few facilities have a perceived problem and are asking the majority of residents, who do not have a problem, to pay. This bill will increase monthly fees by adding the needless expense of an actuarial study that will be of no value to residents. The CCRCs are unique entities with different services, contracts, and amenities and this bill is a one-size fits all solution for a problem that does not exist for the majority of residents living in CCRCs. This bill is ambiguous, overly broad, and presents a real risk of unintended financial consequences that will increase the cost to residents.

There are less expensive ways to handle disputes than through the LTC Ombuds. The CCRCs have existed fine without an ombuds. The expansion of the LTC Ombuds does not provide value for the added cost. The LTC Ombuds was originally designed for long-term care residents who could not advocate for themselves, but the concept is not applicable to residents in independent living. There are already dispute resolution processes at CCRCs that work to resolve resident concerns through the use of resident councils. Residents have a number of opportunities for input and are not hesitant to share their opinions. Resident councils and surveys provide opportunities for input. Resident input is weighed by management and the board. This bill makes an assumption that seniors are not able to speak or advocate for themselves. Residents are intelligent and informed and not timid about bringing their concerns to management.

Staff Summary of Public Testimony (Appropriations):

(In support) Continuing Care Retirement Communities (CCRCs) are places where people move, expecting it to be their last move. Most pay their lifetime savings to get in and pre-pay for future medical services. Often CCRC residents will need admission to higher levels of care, but are limited by the CCRC's available capacity.

It is a good investment for the state to create a role for the Long-Term Care Ombuds for independent CCRC residents. The Long-Term Care Ombuds will provide an alternative, confidential way of managing conflict between independent CCRC residents and CCRC management that will alleviate resident concerns of retaliation or eviction. A pilot project in a single county does not warrant the $400,000 cost shown in the fiscal note.

It is important for CCRCs to undertake actuarial analysis.

(Opposed) Few good-faith amendments from the CCRCs have been incorporated. There is a concern among the CCRCs about driving up operating costs for CCRC residents. The language is vague and would be difficult to administer and is overly broad and subjective. For example, the Type A contract would not apply to any CCRC currently operating in Washington, and it will be difficult for CCRCs to itemize management fees.

Persons Testifying (Health Care & Wellness): (In support) Representative Macri, prime sponsor; Melanie Smith, Washington State Long-Term Care Ombudsman; Allan Affleck, Monica Clement, Inez Allen, and Ruth Werntz, Washington Continuing Care Residents Association; James Husband; Justin Carlson; James Sanders; Donna Kristaponis; Rick Baugh; and Liz Tidyman.

(Opposed) Lisa Hardy, Emerald Communities; Bill Strader, Panorama; Jim Patrick, Judson Park Advocacy Committee; Trudy Thompson, Judson Park Resident Council; Mary Kazlusky, Heron's Key Resident Council; Jerry Gjovaag, Panorama Resident Council; Kathy Houston, Panorama Board of Directors; and Marcy Johnson, Patricia Ness, Sally Ann McLea, and Earl Sakrison, Tacoma Lutheran Retirement Community.

Persons Testifying (Appropriations): (In support) Liz Tidyman; Rick Baugh,Washington Continuing Care Residential Association; and James Husband.

(Opposed) Emily Murphy, LeadingAge Washington.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.