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**SUBSTITUTE HOUSE BILL 2726**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Walkinshaw, Tharinger, Senn, Cody, Ortiz-Self, Magendanz, and Goodman)

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

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

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

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

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

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

(4) "Continuing care retirement community" means an entity that agrees to provide continuing care to a resident under a residency agreement. "Continuing care retirement community" does not include an assisted living facility licensed under chapter 18.20 RCW that does not directly, or through a contractual arrangement with a separately owned and incorporated skilled nursing facility, offer or provide services under chapter 74.42 RCW.

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

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

(7) "Prospective resident" means a person who has completed an application for admission to a continuing care retirement community and makes a deposit to reserve a unit.

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

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

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

(1) Operating a continuing care retirement community;

(2) Entering into a residency agreement with a prospective resident;

(3) Soliciting a prospective resident to pay an application fee or executing a residency agreement; or

(4) Collecting an entrance fee.

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

(a) A written application to the department providing all necessary information on a form provided by the department;

(b) Information about the licensed assisted living facility component of the continuing care retirement community and, if the continuing care retirement community operates a nursing home, information about that component;

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

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

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

(ii) If the continuing care retirement community:

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

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

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

(g) Payment of any registration fees associated with the cost of regulating continuing care retirement communities.

(2) The department shall base its decision to issue a registration on the completeness of the application.

(3) The department shall issue the registration within sixty days of the receipt of an application, payment of fees, submission of disclosures, residency agreements, and the attestation. The department's failure to timely issue a registration may not cause a delay in the change of ownership and ongoing operation of the continuing care retirement community.

(4) Registration is valid for one year.

(5) Registration is not transferable.

NEW SECTION. **Sec.**  The department shall:

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

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

(3) Establish and collect a fee that is sufficient to cover the costs associated with administering the requirements of this chapter; and

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

NEW SECTION. **Sec.**  An entity that is not registered with the department may not represent itself, or refer to itself in advertising and marketing materials as a "registered continuing care retirement community" or "continuing care retirement community."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The continuing care retirement community's policy related to changes in levels of care and any associated fees;

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

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

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

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

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

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

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

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

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

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

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

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

(a) The opportunity to comment in decisions affecting the resident's health, welfare, and financial security;

(b) Transparency regarding the financial stability of the provider operating the facility;

(c) Timely notifications of developments affecting the facility, including ownership changes of the provider operating the facility, a change in the financial condition of the provider operating the facility, and construction and renovation at the facility;

(d) Reasonable accommodations for persons with disabilities;

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

(f) Clear and complete written contracts that establish the mutual rights and obligations of the resident and the continuing care retirement community; and

(g) The assurance that all donations, contributions, gifts, or purchases of provider-sponsored financial products are voluntary and are not a condition of acceptance or ongoing eligibility for services.

(3) The continuing care retirement community shall:

(a) Provide a copy of the expectations specified in this section to each prospective resident prior to the resident signing a residency agreement and at any time when the resident is proposed to be moved to a different level of care; and

(b) Make copies of the expectations specified in this section publicly available in areas accessible to the residents and visitors. The copies of the expectations must also state that residents have the right to file a complaint with the attorney general for violations of this chapter that may constitute a violation of the consumer protection act and contain information explaining how and where a complaint may be filed.

NEW SECTION. **Sec.**  The legislature finds that the violation of the title protection requirements of section 5 of this act, the failure of a continuing care retirement community to register with the department under section 2 of this act, the failure of a continuing care retirement community to comply with the disclosure statement delivery and content requirements under section 6 of this act, and the failure of a continuing care retirement community to comply with the resident expectations established under section 7 of this act are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of the title protection requirements under section 5 of this act, registration requirement under section 2 of this act, the disclosure statement delivery and content requirements under section 6 of this act, and the resident expectations requirements under section 7 of this act are not reasonable in relation to the development and preservation of business and are an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

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

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

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

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

NEW SECTION. **Sec.**  Sections 1 through 9 of this act constitute a new chapter in Title 18 RCW.

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