**1296-S2 AMH SHMK H2270.1 - NOT FOR FLOOR USE**

**2SHB 1296** - H AMD **100**

By Representative Schmick

**NOT ADOPTED 03/08/2019**

Strike everything after the enacting clause and insert the following:

"**Sec.**  RCW 18.390.010 and 2016 c 183 s 1 are each amended to read as follows:

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 refundable deposit to reserve a unit, excluding applicable administrative fees.

(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.

(10) "Actuarial summary" means a management prepared, reasonable summary of a professional conclusion as to the actuarial financial condition of the continuing care retirement community, based on an analysis prepared by an actuarial consultant, or firm, in accordance with commonly accepted actuarial standards of practice issued by the actuarial standards board.

(11) "Independent resident" means a person who is a resident of a continuing care retirement community, but is not living in the assisted living facility component or the nursing facility component of the continuing care retirement community.

(12) "Type A contract" means a care contract that includes housing, residential services, amenities, and unlimited, specific health-related services with periodic payments adjusted for inflation, increases in operating costs, or other methodology-driven adjustments, and typically includes an entrance fee upon entrance. Health-related services provided under the continuing care contract may include an assisted living facility licensed under chapter 18.20 RCW, a nursing home licensed under chapter 18.51 RCW, or in-home services agency licensed pursuant to chapter 70.127 RCW, as established or provided for by the continuing care retirement community.

**Sec.**  RCW 18.390.030 and 2016 c 183 s 3 are each amended to read as follows:

(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. The agreements must be clear and complete and must detail the mutual expectation and obligation of the residents and the continuing care retirement community;

(d) A copy of the disclosure statement that includes current information required by RCW 18.390.060;

(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 eighteen 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 projected to be 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 RCW 18.390.060; ((~~and~~))

(g) Payment of any registration fees associated with the department's cost of registering continuing care retirement communities; and

(h)(i) For any applicant for registration as a continuing care retirement community that offers, or intends to offer, type A contracts to its residents, a copy of the most recent actuarial summary.

(ii) The most recent actuarial summary may not have been prepared as of a date more than three years prior to the date when the continuing care retirement community applied for its current registration, except that the preparation date may be extended to no more than five years if the continuing care retirement community's most recent audited financial statement shows an actuarial surplus and if its three most recent audited financial statements show positive operating earnings.

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

(3) The department shall issue the registration within sixty days of the receipt of a complete 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 two years.

(5) Registration is not transferable.

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

**Sec.**  RCW 18.390.040 and 2016 c 183 s 4 are each amended to read as follows:

(1) The department shall:

(a) Register an individual or entity that submits a complete application that includes all of the materials required in RCW 18.390.030;

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

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

(d) 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; and

(e) Adopt rules, policies, and standards, pursuant to chapter 34.05 RCW, as necessary to administer this chapter.

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

**Sec.**  RCW 18.390.060 and 2016 c 183 s 6 are each amended to read as follows:

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

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

(k) Statements describing 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 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 eighteen 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 projected to be in satisfactory actuarial balance;

(n) For fiscal years ending after January 1, 2019, sources available to fund probable contingent liabilities, including the refund of entrance fees; and

(o) For any continuing care retirement community that offers type A contracts to its residents, an actuarial summary as to the actuarial financial condition of the continuing care retirement community.

(2) ((~~The~~)) All disclosure statements 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 statements of the continuing care retirement community, as most recently submitted to the department, updated to the date of delivery with information that is material to the prospective resident's decision to become a resident.

**Sec.**  RCW 18.390.070 and 2016 c 183 s 7 are each amended to read as follows:

(1) A prospective resident may visit each of the different care levels of the continuing care retirement community, assisted living facility, and nursing home, and may inspect the most recent inspection reports and findings of complaint investigations related to the assisted living and nursing home components 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) Transparency regarding the financial stability of the provider operating the facility;

(b) 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. The management of the continuing care retirement community may deem certain information to be confidential if it is of a sensitive nature such that disclosure of the information would materially harm the position of the continuing care retirement community;

(c) Reasonable accommodations for persons with disabilities;

(d) The opportunity to participate freely in the operation of independent residents' organizations and associations and the opportunity for each resident to provide input into significant decisions affecting the resident's health and financial security; however, management retains decision-making authority over all current and future matters that affect the operations and continued viability of the continuing care retirement community;

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

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

(g) For any residency agreements entered into after December 31, 2019, that provide for refundable entrance fees, the assurance that:

(i) Any refund due to a resident that leaves a unit within a facility must be based upon the entrance fee that the resident provided and not a lesser amount that the facility may receive from a new occupant of that unit;

(ii) Refunds of the entrance fees, or a portion of the entrance fees, shall be available if the resident physically leaves the continuing care retirement community or dies;

(iii) Except as provided in (g)(iv) of this subsection, once five years have passed from the issuance of a certificate of occupancy to a continuing care retirement community, the continuing care retirement community must pay any refunds due to a resident no later than the earlier of (A) two years following the resident's release of control of the unit or death, or (B) when the resident's unit is reoccupied and the resident is no longer living in the continuing care retirement community;

(iv) If the rate of occupancy of persons living in the independent housing units is at or below ninety percent, the refund of the entrance fee that is otherwise payable under (g)(iii) of this subsection must be delayed until the independent housing unit occupancy is above ninety percent of its total capacity; and

(v) The continuing care retirement community shall maintain a current list of vacant units, the dates on which the units became vacant, and the prices at which the units are being offered to prospective residents. A copy of the list must be provided upon request to any current resident of the independent living portion of a continuing care retirement community and any prior resident of the independent living portion of a continuing care retirement community who has not received the full refundable portion of the resident's entrance fees.

(3) The continuing care retirement community shall:

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

(b) Notify independent residents that audited financial statements and, for continuing care retirement communities that offer Type A contracts, an actuarial summary are available to independent residents within thirty days after the statements and opinion letter are delivered to its chief financial officer; and

(c) Make ((~~copies~~)) at least one hard copy of the expectations specified in this section publicly available in areas within the facility accessible to the independent residents and visitors. The copies of the expectations must also state that, in addition to all other rights provided by law, independent residents have the right, as an affected party, 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.

**Sec.**  RCW 18.390.080 and 2016 c 183 s 8 are each amended to read as follows:

(1) The legislature finds that the violation of the title protection requirements of RCW 18.390.050, the failure of a continuing care retirement community to register with the department under RCW 18.390.020, the failure of a continuing care retirement community to comply with the disclosure statement delivery and content requirements under RCW 18.390.060, and the failure of a continuing care retirement community to comply with the resident expectations established under RCW 18.390.070 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 RCW 18.390.050, registration requirement under RCW 18.390.020, the disclosure statement delivery and content requirements under RCW 18.390.060, and the resident expectations requirements under RCW 18.390.070 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.

(2) The attorney general shall provide notice to the management of the continuing care retirement community of submitted complaints including the name of the complainant to allow the community to take corrective action. Except for violations of the title protection requirements of RCW 18.390.050 and the failure of a continuing care retirement community to register with the department under RCW 18.390.020, the attorney general shall limit its application of the consumer protection act in subsection (1) of this section to those cases in which a pattern of complaints, submitted by affected parties, or other activity that, when considered together, demonstrate a pattern of similar conduct that, without enforcement, likely establishes an unfair or deceptive act in trade or commerce and an unfair method of competition.

(3) The right of independent residents to file complaints pursuant to this section does not preclude or limit other legal remedies or recourse available to a resident under applicable law.

**Sec.**  RCW 18.390.900 and 2016 c 183 s 10 are each amended to read as follows:

(1) The provisions of this chapter apply prospectively to acts and omissions that occur after July 1, 2017.

(2) The specific provisions of this chapter that were added pursuant to this act apply prospectively to acts or omissions that occur after the effective date of this section."

Correct the title.

EFFECT: Changes the term "actuarial report" to "actuarial summary" and defines it as a management-prepared, reasonable summary of the professional conclusion of the actuarial financial condition of the continuing care retirement community (CCRC) based on an actuarial consultant's analysis. Requires that applicants for registration as a CCRC that offer Type A contracts submit an actuarial summary to the Department of Social and Health Services (DSHS), rather than an actuarial report. Removes the requirement that CCRCs that do not offer Type A contracts, but have obtained an actuarial report, submit the actuarial report to DSHS as part of their registration materials.

Eliminates the terms "management company" and "management contract" and the specification of when a management company can be considered to control a CCRC. Eliminates the requirements that financial statements included in disclosure statements specify: (1) how funds have been set aside as reserves, and (2) the management fees paid by the CCRC to a management company that controls the CCRC, including the detailed summary of how the fees were spent by the management company.

Requires that disclosure statements mention sources available to fund probable contingent liabilities, such as refunding entrance fees. Removes the requirement that CCRCs that do not offer Type A contracts, but have obtained an actuarial report provide a copy of an actuarial summary as part of disclosure materials. Removes the requirement that CCRCs provide full actuarial reports to independent living residents who submit a written request for them.

Changes the resident expectation to be able to "participate meaningfully" in decisions affecting the resident's health, welfare, and financial security to the expectation to "provide input" into significant decisions affecting the resident's health and financial security. Clarifies that CCRC management retains the decision-making authority over all matters affecting the operations and viability of the CCRC.

Requires that a refund be available to the resident once a unit is reoccupied, rather than 30 days after the unit is reoccupied, unless the independent housing unit occupancy rate is below 90 percent (maintains the two year time frame in the event of departure or death and the 90 percent occupancy exception for that circumstance).

Eliminates the resident expectation related to assuring that agreements and transactions between a CCRC and a management company will be priced at or below fair market value, be in the best interests of residents, and not limit the ability of the CCRC to exercise its right under any agreement.

Removes the resident expectation to receive a copy of the current disclosure statement and any agreement filed with DSHS.

Requires the CCRC to make at least one hard copy of the resident expectations and must be made publicly available by the CCRC, rather than requiring the CCRC to post, publish, and distribute them.