

FINAL BILL REPORT

2SHB 2726

C 183 L 16
Synopsis as Enacted

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).

House Committee on Health Care & Wellness
House Committee on Appropriations
Senate Committee on Health Care
Senate Committee on Ways & Means

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 typically 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 when service levels change to contracts that include housing, residential services, and amenities, but charge 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.

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.

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:

Certification of Continuing Care Retirement Communities.

An entity must be registered by the Department of Social and Health Services (Department) as a continuing care retirement community (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 fee. For newer CCRCs with a limited financial history, the financial statement requirement may be satisfied by submitting 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. Application materials are not subject to public disclosure.

The Department must conduct several regulatory activities, including issuing registrations, reviewing disclosure statements for completeness, adopting fees, and establishing an online listing of the names and addresses of registered CCRCs. The Department's registration activities are limited to reviewing applications for completeness. The Department must inform an applicant if its application is incomplete and allow the applicant to supplement its submission.

The term "continuing care" means housing and care provided upon payment of an entrance fee and under a residency agreement. The term "care" includes nursing, medical or other health-related services; protection or supervision; assistance with activities of daily living; or any combination of these. "Continuing care retirement communities" are defined as entities that agree to provide continuing care to a resident under a residency agreement. The term does not include assisted living facilities if they do not provide skilled nursing services, either directly or through contract.

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 number of living units, number of assisted living and nursing home beds, occupancy rates, 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. In addition, each CCRC must make the resident expectations publicly available. Copies of resident expectations must include a statement regarding 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.

Votes on Final Passage:

House	83	13
Senate	47	0

Effective: July 1, 2017