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**SENATE BILL 5796**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Dhingra, Pedersen, Palumbo, and Kuderer

AN ACT Relating to continuing care retirement communities; amending RCW 18.390.010, 18.390.030, 18.390.040, 18.390.060, 18.390.070, 18.390.080, and 18.390.900; adding a new section to chapter 18.390 RCW; adding a new chapter to Title 43 RCW; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that protecting seniors, people with disabilities, and other individuals who wish to age in place is a priority for the state, and that the older Americans act of 1965 required the creation of Washington's long-term care ombuds program to effectively assist individuals living in long-term care facilities in the assertion of their civil and human rights. The legislature further finds that it is necessary to explore how the services of the long-term care ombuds could benefit individuals who live in continuing care retirement communities, which are a hybrid of independent living arrangements and long-term care settings. The independent residents of continuing care retirement communities have needs that are similar to those of long-term care residents, and are often compounded by the unique financial and contractual agreements between residents and the continuing care retirement community, including the significant investment of an individual's lifelong savings into such an arrangement. The legislature, therefore, finds that it is appropriate to provide the independent residents of continuing care retirement communities with access to the Washington state long-term care ombuds program and direct the long-term care ombuds to pilot a demonstration serving the unique financial needs of independent continuing care retirement community residents.

(2) The legislature finds that, pursuant to federal and state laws, the office of the state long-term care ombuds currently provides advocacy and other services to long-term care residents who live in the assisted living components and nursing facility components of continuing care retirement communities.

(3) The legislature intends to provide independent residents of continuing care retirement communities access to the office of the state long-term care ombuds through a pilot project.

**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 report" means a report or analysis prepared by an actuary in accordance with commonly accepted actuarial standards of practice issued by the actuarial standards board.

(11) "Management company" means a person or entity that operates or manages a continuing care retirement community pursuant to a management contract with that continuing care retirement community.

(12) "Management contract" means a management, service, or incentive payment contract between a management company and a continuing care retirement community under which the management company provides services or products for 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 (i) residency agreements and (ii) service or care agreements used for nonindependent residents 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. Modifications of the agreements must be submitted to the department within sixty days following implementation of the modifications;

(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 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) A copy of the most recent actuarial report.

(ii) The most recent actuarial report 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 a surplus and if its three most recent audited financial statements show positive operating earnings. The continuing care retirement community shall redact any information that contains personal financial or health care information related to any resident.

(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.

NEW SECTION. **Sec.**  A new section is added to chapter 18.390 RCW to read as follows:

(1) For the purposes of RCW 18.390.060 and 18.390.070, a management company controls a continuing care retirement community if:

(a) At least fifty-one percent of the directors, trustees, governing board members, or members of the continuing care retirement community are either (i) also trustees, directors, agents, or employees of the management company or (ii) controlled by the management company; or

(b) The management company holds a majority of the stock or other equity of the continuing care retirement community.

(2) For the purposes of subsection (1)(a) of this section, a director, trustee, governing board member, or member of the continuing care retirement community is controlled by a management company if the management company has the power to remove the person and designate a new director, trustee, governing board member, or member of the continuing care retirement community.

**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.

Beginning with fiscal years ending after January 1, 2019, financial statements must disclose:

(A) Whether, and in what manner, funds have been set aside for reserves or other contingent liabilities reflected in the financial statements; and

(B) The management fees or other compensation paid by the continuing care retirement community to a management company, or any related party, that controls the continuing care retirement community during the continuing care retirement community's two preceding fiscal years. The disclosure must include a detailed summary of how the fees and compensation were spent by the management company, including an itemization of the dollar amount expenditures that were not for the direct benefit of the continuing care retirement community or its residents, and the dollar amount of management and occupancy fees spent on payment of indebtedness to the management company, including agents and contractors selected by the management company. The management company is a component of the continuing care retirement community for the purposes of this subsection to the extent that the management company has received fees and compensation from the continuing care retirement community and must use its best efforts to identify the itemized amounts; 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; and

(n)(i) An actuarial summary of the continuing care retirement community's most recent actuarial report, including material actuarial assumptions.

(ii)(A) A resident or prospective resident of the independent living portion of a continuing care retirement community may obtain a copy of a continuing care retirement community's most recent full actuarial report by submitting a written request to the continuing care retirement community. Before disclosing a full actuarial report, a continuing care retirement community shall redact any information that contains personal financial or health care information related to any resident.

(B) A resident or prospective resident who has obtained a copy of a continuing care retirement community's full actuarial report may only disclose that full actuarial report to other residents of the independent living portion of a continuing care retirement community and their legal, financial, and actuarial advisers. A continuing care retirement community may adopt a reasonable confidentiality agreement and require that any disclosures of the full actuarial report to other residents or prospective residents of the independent living portion of the continuing care retirement community and their legal, financial, and actuarial advisers must comply with the terms of the confidentiality agreement.

(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.

(4) For the purposes of this section, in addition to the meaning in RCW 18.390.010, the term "continuing care retirement community" also includes 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.

**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 of each resident to participate meaningfully in decisions affecting the resident's health, welfare, and financial security;

(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; and

(iii) Refunds due to a resident must be paid no later than the earlier of (A) two years following the resident's departure or death, or (B) when the resident's unit is reoccupied and the resident is no longer living in the continuing care retirement community. 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; and

(h) The assurance that all agreements and transactions between the continuing care retirement community and a management company, including agreements and transactions with any parties related to the management company, that controls the continuing care retirement community must be priced at or below fair market value, in the best interests of current and future residents and do not substantially limit the continuing care retirement community's ability to exercise its rights under any agreement.

(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 actuarial evaluations are available to such residents within thirty days after such statements and evaluations are delivered to its chief financial officer; and

(c) Make copies of the expectations specified in this section publicly available by posting, periodic publication, or distribution to residents and in areas within the facility accessible to the independent residents and visitors or in materials distributed to residents. 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 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.

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

(1) "Continuing care retirement community" means the same as in RCW 18.390.010.

(2) "Department" means the department of commerce.

(3) "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.

(4) "State long-term care ombuds" means the office of the state long-term care ombuds created in RCW 43.190.030.

NEW SECTION. **Sec.**  (1) The department and the private nonprofit organization that contracts with the department to provide long-term care ombuds services shall enter into a separate contract for additional services. The contract must enable the state long-term care ombuds to provide services to the residents of continuing care retirement communities through a pilot project in a county with over one million five hundred thousand residents that has a suitable concentration of continuing care retirement communities for a period of two years.

(2) The state long-term care ombuds shall design and staff a pilot project that performs the following functions:

(a) Identifies, investigates, and resolves complaints made by or on behalf of independent residents relating to actions or inactions that may adversely affect such a resident's health, safety, welfare, rights, or financial well-being including, but not limited to, matters involving evictions, involuntary relocation to a higher level of care, refusal to relocate to a higher level of care, physical conditions of facility, and difficulties encountered in obtaining services;

(b) Track and document the types of needs, complaints, challenges, and successes communicated to the ombuds by independent residents;

(c) Develop and offer educational information, resources, and tools for self-advocacy by independent residents; and

(d) Carry out other activities as deemed appropriate by the state long-term care ombuds.

(3) The state long-term care ombuds shall create a pilot project advisory committee to provide feedback and input about the pilot program. The advisory committee must include, at a minimum: Independent residents, continuing care retirement community providers, legal advocates, and consumers.

(4) The state long-term care ombuds shall prepare and submit a report by December 1, 2021:

(a) Describing the activities carried out during the pilot project;

(b) Evaluating the problems experienced by, and the complaints made by, or on behalf of, independent residents; and

(c) Containing any policy, regulatory, or legislative recommendations for improving and protecting the health, safety, welfare, and rights of independent residents.

(5) Nothing in this chapter is intended to alter or supplant state and federal statutes and regulations governing the long-term care ombuds program. Such laws and regulations apply to the provision of ombuds advocacy and services to independent residents and long-term care residents alike.

(6) This section expires July 1, 2022.

NEW SECTION. **Sec.**  Sections 1, 10, and 11 of this act constitute a new chapter in Title 43 RCW.

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