

2SHB 1296 - H AMD 100

By Representative Schmick

NOT ADOPTED 03/08/2019

1 Strike everything after the enacting clause and insert the  
2 following:

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

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

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

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

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

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

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

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

1 (7) "Prospective resident" means a person who has completed an  
2 application for admission to a continuing care retirement community  
3 and makes a refundable deposit to reserve a unit, excluding  
4 applicable administrative fees.

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

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

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

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

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

33 **Sec. 2.** RCW 18.390.030 and 2016 c 183 s 3 are each amended to  
34 read as follows:

35 (1) An applicant for a registration as a continuing care  
36 retirement community must submit the following materials to the  
37 department:

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

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

5 (c) Copies of any residency agreements that the continuing care  
6 retirement community intends to use for the certification period. The  
7 agreements must be clear and complete and must detail the mutual  
8 expectation and obligation of the residents and the continuing care  
9 retirement community;

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

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

18 (ii) If the continuing care retirement community:

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

24 (B) Has not obtained financing, a summary of the actuarial  
25 analysis for the new continuing care retirement community stating  
26 that the continuing care retirement community is projected to be in  
27 satisfactory actuarial balance;

28 (f) An attestation by a management representative of the  
29 continuing care retirement community that the continuing care  
30 retirement community is in compliance with the disclosure  
31 notification requirements of RCW 18.390.060; (~~and~~)

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

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

39 (ii) The most recent actuarial summary may not have been prepared  
40 as of a date more than three years prior to the date when the

1 continuing care retirement community applied for its current  
2 registration, except that the preparation date may be extended to no  
3 more than five years if the continuing care retirement community's  
4 most recent audited financial statement shows an actuarial surplus  
5 and if its three most recent audited financial statements show  
6 positive operating earnings.

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

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

19 (4) Registration is valid for two years.

20 (5) Registration is not transferable.

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

23 **Sec. 3.** RCW 18.390.040 and 2016 c 183 s 4 are each amended to  
24 read as follows:

25 (1) The department shall:

26 (a) Register an individual or entity that submits a complete  
27 application that includes all of the materials required in RCW  
28 18.390.030;

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

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

35 (d) Create and maintain an online listing that is readily  
36 available to the public of the names and addresses of continuing care  
37 retirement communities that are registered with the department; and

38 (e) Adopt rules, policies, and standards, pursuant to chapter  
39 34.05 RCW, as necessary to administer this chapter.

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

5 **Sec. 4.** RCW 18.390.060 and 2016 c 183 s 6 are each amended to  
6 read as follows:

7 (1) A continuing care retirement community must prepare a  
8 disclosure statement that includes the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (A) Has obtained financing, but does not have two years of  
38 audited financial statements as required under (m) (i) of this  
39 subsection, an independent accountant's report opinion letter that

1 has evaluated the financial feasibility of the continuing care  
2 retirement community; or

3 (B) Has not obtained financing, a summary of the actuarial  
4 analysis for the new continuing care retirement community stating  
5 that the continuing care retirement community is projected to be in  
6 satisfactory actuarial balance;

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

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

14 (2) (~~The~~) All disclosure statements must be written in  
15 understandable language and a clear format.

16 (3) Prior to entering into a residency agreement with, or  
17 accepting an entrance fee from, any prospective resident, a  
18 continuing care retirement community must deliver to the prospective  
19 resident a copy of the disclosure statements of the continuing care  
20 retirement community, as most recently submitted to the department,  
21 updated to the date of delivery with information that is material to  
22 the prospective resident's decision to become a resident.

23 **Sec. 5.** RCW 18.390.070 and 2016 c 183 s 7 are each amended to  
24 read as follows:

25 (1) A prospective resident may visit each of the different care  
26 levels of the continuing care retirement community, assisted living  
27 facility, and nursing home, and may inspect the most recent  
28 inspection reports and findings of complaint investigations related  
29 to the assisted living and nursing home components covering a period  
30 of not less than two years, as available, prior to signing a  
31 residency agreement.

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

35 (a) Transparency regarding the financial stability of the  
36 provider operating the facility;

37 (b) Timely notifications of developments affecting the facility,  
38 including ownership changes of the provider operating the facility, a  
39 change in the financial condition of the provider operating the

1 facility, and construction and renovation at the facility. The  
2 management of the continuing care retirement community may deem  
3 certain information to be confidential if it is of a sensitive nature  
4 such that disclosure of the information would materially harm the  
5 position of the continuing care retirement community;

6 (c) Reasonable accommodations for persons with disabilities;

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

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

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

21 (g) For any residency agreements entered into after December 31,  
22 2019, that provide for refundable entrance fees, the assurance that:

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

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

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

38 (iv) If the rate of occupancy of persons living in the  
39 independent housing units is at or below ninety percent, the refund  
40 of the entrance fee that is otherwise payable under (g)(iii) of this

1 subsection must be delayed until the independent housing unit  
2 occupancy is above ninety percent of its total capacity; and

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

12 (3) The continuing care retirement community shall:

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

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

21 (c) Make ((copies)) at least one hard copy of the expectations  
22 specified in this section publicly available in areas within the  
23 facility accessible to the independent residents and visitors. The  
24 copies of the expectations must also state that, in addition to all  
25 other rights provided by law, independent residents have the right,  
26 as an affected party, to file a complaint with the attorney general  
27 for violations of this chapter that may constitute a violation of the  
28 consumer protection act and contain information explaining how and  
29 where a complaint may be filed.

30 **Sec. 6.** RCW 18.390.080 and 2016 c 183 s 8 are each amended to  
31 read as follows:

32 (1) The legislature finds that the violation of the title  
33 protection requirements of RCW 18.390.050, the failure of a  
34 continuing care retirement community to register with the department  
35 under RCW 18.390.020, the failure of a continuing care retirement  
36 community to comply with the disclosure statement delivery and  
37 content requirements under RCW 18.390.060, and the failure of a  
38 continuing care retirement community to comply with the resident  
39 expectations established under RCW 18.390.070 are matters vitally

1 affecting the public interest for the purpose of applying the  
2 consumer protection act, chapter 19.86 RCW. A violation of the title  
3 protection requirements under RCW 18.390.050, registration  
4 requirement under RCW 18.390.020, the disclosure statement delivery  
5 and content requirements under RCW 18.390.060, and the resident  
6 expectations requirements under RCW 18.390.070 are not reasonable in  
7 relation to the development and preservation of business and are an  
8 unfair or deceptive act in trade or commerce and an unfair method of  
9 competition for the purpose of applying the consumer protection act,  
10 chapter 19.86 RCW.

11 (2) The attorney general shall provide notice to the management  
12 of the continuing care retirement community of submitted complaints  
13 including the name of the complainant to allow the community to take  
14 corrective action. Except for violations of the title protection  
15 requirements of RCW 18.390.050 and the failure of a continuing care  
16 retirement community to register with the department under RCW  
17 18.390.020, the attorney general shall limit its application of the  
18 consumer protection act in subsection (1) of this section to those  
19 cases in which a pattern of complaints, submitted by affected  
20 parties, or other activity that, when considered together,  
21 demonstrate a pattern of similar conduct that, without enforcement,  
22 likely establishes an unfair or deceptive act in trade or commerce  
23 and an unfair method of competition.

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

27 **Sec. 7.** RCW 18.390.900 and 2016 c 183 s 10 are each amended to  
28 read as follows:

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

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

34 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.

--- END ---