
SECOND SUBSTITUTE HOUSE BILL 1296

State of Washington

66th Legislature

2019 Regular Session

By House Appropriations (originally sponsored by Representatives Macri, Goodman, Appleton, Cody, Thai, Tharinger, and Springer)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to continuing care retirement communities;
2 amending RCW 18.390.010, 18.390.030, 18.390.040, 18.390.060,
3 18.390.070, 18.390.080, and 18.390.900; and adding a new section to
4 chapter 18.390 RCW.

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

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

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

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

20 (4) "Continuing care retirement community" means an entity that
21 agrees to provide continuing care to a resident under a residency

1 agreement. "Continuing care retirement community" does not include an
2 assisted living facility licensed under chapter 18.20 RCW that does
3 not directly, or through a contractual arrangement with a separately
4 owned and incorporated skilled nursing facility, offer or provide
5 services under chapter 74.42 RCW.

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

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

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

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

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

26 (10) "Actuarial report" means a report or analysis prepared by an
27 actuary in accordance with commonly accepted actuarial standards of
28 practice issued by the actuarial standards board.

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

32 (12) "Management contract" means a management, service, or
33 incentive payment contract between a management company and a
34 continuing care retirement community under which the management
35 company provides services or products for the continuing care
36 retirement community.

37 (13) "Type A contract" means a care contract that includes
38 housing, residential services, amenities, and unlimited, specific
39 health-related services with periodic payments adjusted for
40 inflation, increases in operating costs, or other methodology-driven

1 adjustments, and typically includes an entrance fee upon entrance.
2 Health-related services provided under the continuing care contract
3 may include an assisted living facility licensed under chapter 18.20
4 RCW, a nursing home licensed under chapter 18.51 RCW, or in-home
5 services agency licensed pursuant to chapter 70.127 RCW, as
6 established or provided for by the continuing care retirement
7 community.

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

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

14 (1) An applicant for a registration as a continuing care
15 retirement community must submit the following materials to the
16 department:

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

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

23 (c) Copies of any (i) residency agreements and (ii) service or
24 care agreements used for nonindependent residents that the continuing
25 care retirement community intends to use for the certification
26 period. The agreements must be clear and complete and must detail the
27 mutual expectation and obligation of the residents and the continuing
28 care retirement community;

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

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

37 (ii) If the continuing care retirement community:

38 (A) Has obtained financing, but has been in operation less than
39 two years, a copy of the audited financial statement for the most

1 current period, if available, and an independent accountant's report
2 opinion letter that has evaluated the financial feasibility of the
3 continuing care retirement community; or

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

8 (f) An attestation by a management representative of the
9 continuing care retirement community that the continuing care
10 retirement community is in compliance with the disclosure
11 notification requirements of RCW 18.390.060; (~~and~~)

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

15 (h) (i) A copy of the most recent actuarial report must be
16 submitted if the applicant either (A) offers, or intends to offer,
17 type A contracts to its residents, or (B) does not offer, nor intend
18 to offer, type A contracts, but has obtained one or more actuarial
19 reports with the three-year period described in (ii) of this
20 subsection.

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

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

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

1 (4) Registration is valid for two years.

2 (5) Registration is not transferable.

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

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

7 (1) The department shall:

8 (a) Register an individual or entity that submits a complete
9 application that includes all of the materials required in RCW
10 18.390.030;

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

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

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

20 (e) Adopt rules, policies, and standards, pursuant to chapter
21 34.05 RCW, as necessary to administer this chapter.

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

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 18.390
27 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 care retirement community and the resident in the event of off-campus
2 placement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (n) For any continuing care retirement community that either
31 offers type A contracts to its residents or does not offer type A
32 contracts, but has obtained one or more actuarial reports within the
33 three-year period described in section 2(1)(h)(ii) of this act:

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

37 (ii)(A) A resident or prospective resident of the independent
38 living portion of a continuing care retirement community may obtain a
39 copy of a continuing care retirement community's most recent full
40 actuarial report by submitting a written request to the continuing

1 care retirement community. Before disclosing a full actuarial report,
2 a continuing care retirement community shall redact any information
3 that contains personal financial or health care information related
4 to any resident.

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

16 (2) ((The)) All disclosure statements must be written in
17 understandable language and a clear format.

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

25 (4) For the purposes of this section, in addition to the meaning
26 in RCW 18.390.010, the term "continuing care retirement community"
27 also includes any entity that manages or operates, or has a
28 significant role in the management or operation of, an entity that
29 agrees to provide continuing care to a resident under a residency
30 agreement.

31 **Sec. 6.** RCW 18.390.070 and 2016 c 183 s 7 are each amended to
32 read as follows:

33 (1) A prospective resident may visit each of the different care
34 levels of the continuing care retirement community, assisted living
35 facility, and nursing home, and may inspect the most recent
36 inspection reports and findings of complaint investigations related
37 to the assisted living and nursing home components covering a period
38 of not less than two years, as available, prior to signing a
39 residency agreement.

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

4 (a) Transparency regarding the financial stability of the
5 provider operating the facility;

6 (b) Timely notifications of developments affecting the facility,
7 including ownership changes of the provider operating the facility, a
8 change in the financial condition of the provider operating the
9 facility, and construction and renovation at the facility. The
10 management of the continuing care retirement community may deem
11 certain information to be confidential if it is of a sensitive nature
12 such that disclosure of the information would materially harm the
13 position of the continuing care retirement community;

14 (c) Reasonable accommodations for persons with disabilities;

15 (d) The opportunity to participate freely in the operation of
16 independent residents' organizations and associations and the
17 opportunity of each resident to participate meaningfully in decisions
18 affecting the resident's health, welfare, and financial security;

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

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

26 (g) For any residency agreements entered into after December 31,
27 2019, that provide for refundable entrance fees, the assurance that:

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

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

35 (iii) Once five years have passed from the issuance of a
36 certificate of occupancy to a continuing care retirement community,
37 the continuing care retirement community must pay any refunds due to
38 a resident no later than the earlier of (A) the thirtieth day after
39 the resident's unit is reoccupied and the resident is no longer
40 living in the continuing care retirement community, or (B) two years

1 following the resident's departure or death, which may be extended by
2 one calendar month for each month the occupancy rate of independent
3 living units within the community is below ninety percent on the
4 first day of that month. The continuing care retirement community
5 shall maintain a current list of vacant units, the dates on which the
6 units became vacant, and the prices at which the units are being
7 offered to prospective residents. A copy of the list must be provided
8 upon request to any current resident of the independent living
9 portion of a continuing care retirement community and any prior
10 resident of the independent living portion of a continuing care
11 retirement community who has not received the full refundable portion
12 of the resident's entrance fees;

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

21 (i) The receipt, upon request, of a copy of the current
22 disclosure statement prepared under RCW 18.390.060 and any agreement
23 most recently filed with the department under RCW 18.390.030.

24 (3) The continuing care retirement community shall:

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

28 (b) Notify independent residents that audited financial
29 statements and actuarial evaluations are available to such residents
30 within thirty days after such statements and evaluations are
31 delivered to its chief financial officer; and

32 (c) Make copies of the expectations specified in this section
33 publicly available by posting, periodic publication, or distribution
34 to residents and in areas within the facility accessible to the
35 independent residents and visitors or in materials distributed to
36 residents. The copies of the expectations must also state that, in
37 addition to all other rights provided by law, independent residents
38 have the right, as an affected party, to file a complaint with the
39 attorney general for violations of this chapter that may constitute a

1 violation of the consumer protection act and contain information
2 explaining how and where a complaint may be filed.

3 **Sec. 7.** RCW 18.390.080 and 2016 c 183 s 8 are each amended to
4 read as follows:

5 (1) The legislature finds that the violation of the title
6 protection requirements of RCW 18.390.050, the failure of a
7 continuing care retirement community to register with the department
8 under RCW 18.390.020, the failure of a continuing care retirement
9 community to comply with the disclosure statement delivery and
10 content requirements under RCW 18.390.060, and the failure of a
11 continuing care retirement community to comply with the resident
12 expectations established under RCW 18.390.070 are matters vitally
13 affecting the public interest for the purpose of applying the
14 consumer protection act, chapter 19.86 RCW. A violation of the title
15 protection requirements under RCW 18.390.050, registration
16 requirement under RCW 18.390.020, the disclosure statement delivery
17 and content requirements under RCW 18.390.060, and the resident
18 expectations requirements under RCW 18.390.070 are not reasonable in
19 relation to the development and preservation of business and are an
20 unfair or deceptive act in trade or commerce and an unfair method of
21 competition for the purpose of applying the consumer protection act,
22 chapter 19.86 RCW.

23 (2) The attorney general shall provide notice to the management
24 of the continuing care retirement community of submitted complaints
25 including the name of the complainant to allow the community to take
26 corrective action. Except for violations of the title protection
27 requirements of RCW 18.390.050 and the failure of a continuing care
28 retirement community to register with the department under RCW
29 18.390.020, the attorney general shall limit its application of the
30 consumer protection act in subsection (1) of this section to those
31 cases in which a pattern of complaints, submitted by affected
32 parties, or other activity that, when considered together,
33 demonstrate a pattern of similar conduct that, without enforcement,
34 likely establishes an unfair or deceptive act in trade or commerce
35 and an unfair method of competition.

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

1 **Sec. 8.** RCW 18.390.900 and 2016 c 183 s 10 are each amended to
2 read as follows:

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

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

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