

SENATE BILL REPORT

SB 5691

As of February 14, 2025

Title: An act relating to adopting the department of social and health services report recommendations addressing a regulatory oversight plan for continuing care retirement communities.

Brief Description: Adopting the department of social and health services report recommendations addressing a regulatory oversight plan for continuing care retirement communities.

Sponsors: Senators Cleveland and Nobles.

Brief History:

Committee Activity: Health & Long-Term Care: 2/14/25.

Brief Summary of Bill

- Creates a new registration process for Continuing Care Retirement Communities (CCRCs) beginning July 1, 2027.
- Clarifies the Department of Social and Health Services and the Office of Attorney General's statutory authority to provide regulatory oversight of CCRCs.
- Establishes a Senior Independent Living Ombuds program specifically for CCRC independent living residents.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Staff: Julie Tran (786-7283)

Background: A Continuing Care Retirement Community (CCRC) is an entity that agrees to provide continuing care to a resident under a residency agreement. It is a residential community for adults that offers a range of housing options—normally independent living

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

through nursing home care, and varying levels of medical and personal care services.

A CCRC resident signs a long-term contract, or residency agreement, that provides for housing, personal care, housekeeping, yard care and nursing care. This contract typically involves either an entry fee or buy-in fee in addition to monthly service charges, which may change according to the medical or personal care services required. Fees vary depending on whether the person owns or rents the living space, its size and location, the type of service plan chosen, and the current risk for needing intensive long-term care. Because the contracts are lifelong and fees vary, prospective CCRC residents are encouraged to get financial and legal advice before executing the contract or agreement.

Washington State registers but does not license CCRCs. CCRCs are also known as Life Plan Communities (LPCs). If the CCRC operates a facility that requires Washington State licensing, such as a skilled nursing facility, then the Department of Social and Health Services (DSHS) licenses those individual facilities and those regulations apply to individuals residing in them.

CCRCs offer many different features and benefits to residents. They provide some or all of the following levels of care: independent living; assisted living, including memory care; and skilled nursing, including rehabilitation and memory care.

As of February 2025, there are over 20 CCRCs registered in Washington State and in February 2021, there were approximately 8500 CCRC residents in the state.

Current Statute. Since July 1, 2017, CCRCs have been required to register with DSHS. To become registered, an applicant must submit information about the assisted living and nursing home components of the CCRC, copies of residency agreements, a copy of the current disclosure statement, copies of audited financial statements, and an attestation that the CCRC is in compliance with disclosure notification requirement.

Disclosure requirements for prospective residents include information about ownership; descriptive information about the facilities; policies regarding notifications of fee increases, changes in levels of care, and contract termination; a description of standard and supplemental services; and the most recent audited financial statements.

Residents of CCRCs are afforded several expectations that a CCRC must fulfill. These expectations include transparency in the financial stability of the facility, timely notification of developments affecting the facility, reasonable accommodations for persons with disabilities, the opportunity to participate in resident organizations, the opportunity to seek independent review of contracts and agreements, and the assurance that donations made by residents to the CCRC are voluntary.

DSHS must:

- register an entity that submits a complete application that includes all of the materials

- required;
- review the disclosure statements submitted by applicants for an initial or renewal registration to operate a CCRC for completeness;
- establish and collect a fee sufficient to cover DSHS' cost associated with administering the registration requirements; and
- create and maintain an online listing that is readily available to the public of the names and addresses of CCRCs registered with DSHS.

2022 Office of Insurance Commissioner Study. In 2022, the Legislature appropriated funds directing the state's Office of Insurance Commissioner (OIC) to conduct an assessment of federal and state authorities to provide recommendations on creating a legal framework within which CCRCs may achieve heightened consumer protections for the CCRC residents. The key findings include:

- Washington State does not license CCRCs, but instead requires their registration and renewal;
- there are limited financial regulations and disclosure requirements for CCRCs in Washington;
- there are no current state authorities that mandate a CCRC to maintain specific reserves, meet certain surplus levels or refund entry fees;
- CCRCs can require substantial nonrefundable entrance fees;
- residents have minimal control on how their facilities will use funds committed by their residents;
- CCRC financials are subject to varying levels of administrative review and financial scrutiny across the country; and
- Washington exhibits lower regulatory oversight and financial scrutiny on initial registration and subsequent renewals, in comparison with other states.

The study formally recommended that a single agency regulatory system shows the most potential to achieve additional consumer protections for residents.

2024 Department of Social and Health Services Report. In 2023, the Legislature appropriated funds directing DSHS in collaboration with OIC and the Office of the Attorney General (AGO), to create a regulatory oversight plan for CCRCs, focusing primarily on establishing and implementing resident consumer protections, and submit a final plan to the Legislature by December 1, 2024.

The plan concluded that there needed to be a clarification of the authority for DSHS and AGO to enable them to meet the increased responsibilities and support the consumer protections recommended in the plan.

The plan's recommendations for increasing consumer protection for CCRC residents include:

- recommendations for increasing consumer protection for residents of CCRCs;
- establish more financial protections and transparency;

- establish a more robust registration process;
- clarify AGO's statutory authority to enforce the Revised Code of Washington (RCW) 18.390;
- establish an independent ombuds program specifically for CCRC residents;
- establish more operational transparency for CCRC residents;
- clarify resident access to contracted services; and
- define data needs and requirements for regulatory monitoring and oversight.

Summary of Bill: CCRC means an entity that provides care to a resident throughout their life and as their care needs change under a residency agreement.

Registration Process. Beginning July 1, 2027 an applicant for a registration as a CCRC must submit the following materials to DSHS:

- a written application providing all necessary information on a form to DSHS;
- proof of licensure for the assisted living facility and proof of licensure and certification for the CCRC's nursing facility component when a CCRC operates an assisted living facility (ALF), a skilled nursing facility (SNF), or both, as part of their services to residents;
- copies of any residency agreements that the CCRC intends to use for the certification period;
- a copy of the disclosure statement containing the required information;
- audited financial statements that, at a minimum, detail:
 1. the financial resources of the CCRC that is available to care for current residents;
 2. an adequate expected fee structure to support new residents and prospective residents; and
 3. positive projected cash and investment balances over ten years including revenue and expenses from all known sources, including any fees of residents and noncontractual residents;
- an attestation by a CCRC management representative that the CCRC is in compliance with the disclosure requirements;
- payment of any registration fees associated with DSHS' cost of registering CCRCs; and
- an implementation plan that contains certain information.

The implementation must outline, at a minimum:

- how the CCRC residents and noncontractual residents will be notified of decisions made by the CRRC that may impact the CCRC's solvency;
- how the CCRC will involve residents in CCRC's day-to-day business operations; and
- how the CCRC will ensure resident and noncontractual resident participation on the CCRC's board of directors.

Nothing prevents DSHS from asking for additional documentation from the CCRC as needed or by request of the contractor to support actuarial analysis or department review.

For CCRCs operating under a valid registration issued prior to July 1, 2025, the registration shall be considered valid by DSHS until September 30, 2027, if the CCRC applies for a new registration by July 1, 2027. DSHS must not accept applications or issue registrations for new CCRCs before July 1, 2027.

In the event DSHS issues a denial of registration, the CCRC will have the right to an administrative appeal. If the CCRC had a valid registration from DSHS at the time of application, the CCRC may continue to operate until a decision on the appeal is issued, but the CCRC may not enter into any new residency agreements with residents until the appeal overturns the DSHS decision.

Oversight Structure and Authority.

DSHS must:

- register an entity that submits a complete application that includes all of the materials required and meets the registration requirements;
- base the decision to issue a registration on an evaluation of a comprehensive actuarial study determining a reasonable expectation that the CCRC will be able to provide contracted services over a ten-year period, verification that any CCRC licensed portions are in good standing, and verification that the residency agreements, disclosure statements, and the implementation plan meet the registration requirements;
- issue the registration or denial within 60 days of the receipt of the complete application; and
- contract with an organization with the expertise to provide actuarial analysis of CCRCs based on the audited financial documents and the Actuarial Standards Board's most current standards of practice.

DSHS has rulemaking authority to implement the CCRC registration oversight.

The AGO's enforcement authority under the CCRC statutes are amended to align with the common statutory language for a per se violation under the Consumer Protection Act.

Senior Independent Living Ombuds. The Office of the State Senior Independent Living Ombuds (SIL Ombuds) is created. Department of Commerce (Commerce) must contract with a private nonprofit organization to provide SIL Ombuds services to residents in the CCRC independent living units as specified by the state and according to the needs of CCRC independent living residents. Commerce must adopt rules necessary to carry out the responsibilities and requirements outlined for the SIL Ombuds.

The SIL Ombuds must have the following powers and duties:

- to provide services for coordinating the activities of SIL Ombuds throughout the state;
- carry out such other activities as Commerce deems appropriate;

- establish procedures for coordinating with the Office of the State Long-Term Care Ombuds and the Office of the Developmental Disabilities Ombuds, where relevant to ensure the needs of mutual clients or shared communities are met;
- establish a statewide uniform reporting system to collect, track, and analyze data relating to complaints and conditions in the senior independent living of CCRC for the purpose of identifying and resolving significant problems, with provision for submission of such data to Commerce and the Legislature, on at least an annual basis;
- develop and offer educational information, resources, and tools for self-advocacy by CCRC independent living residents; and
- establish procedures to ensure that any files maintained by ombuds programs shall be disclosed only at the discretion of the ombuds having authority over the disposition of such files, except that the identity of any complainant or resident of a CCRC shall not be disclosed by such ombuds unless: such complainant or resident, or the complainant's or resident's legal representative, consents in writing to such disclosure; or such disclosure is required by court order.

Senior Independent Living Ombuds' Requirements. Any SIL Ombuds must have training, experience, or both, in the following areas:

- gerontology or other related social services programs;
- the legal system; and
- dispute or problem resolution techniques, including investigation, mediation, and negotiation.

A SIL Ombuds may not have been employed by or participated in the management of any senior independent housing or CCRC within the past year.

No SIL Ombuds or any immediate family member of the ombuds shall have, or have had within the past year, any significant ownership or investment interest in one or more CCRC units.

A SIL Ombuds shall not be assigned to a CCRC in which an immediate family member of that ombuds resides.

Senior Independent Living Ombuds' Duties. A SIL Ombuds must:

- identify, investigate, and resolve complaints made by or on behalf of CCRC senior independent living residents relating to administrative action, inaction, or decisions which may adversely affect the health, safety, welfare, and rights of these individuals;
- monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies with respect to senior independent living in CCRC in this state;
- provide information as appropriate to residents, resident representatives, and others regarding the rights of residents, and to public agencies regarding the problems of individuals residing in senior independent living units in a CCRC;
- provide for training volunteers and promoting the development of citizen

- organizations to participate in the ombuds program; and
- develop procedures governing the right of entry of all SIL Ombuds to CCRC buildings containing any senior independent living units and shall have access to residents with provisions made for privacy for the purpose of hearing, investigating, and resolving complaints of, and rendering advice to, residents at any time deemed necessary and reasonable by the state ombuds to effectively carry out ombud's duties.

A trained volunteer SIL Ombuds, in accordance with the policies and procedures established by the State's SIL Ombuds program, shall inform residents, their representatives, and others about the rights of residents, and may identify, investigate, and resolve complaints made by or on behalf of residents relating to action, inaction, or decisions, that may adversely affect the health, safety, welfare, and rights of these individuals.

The Office of the State SIL Ombuds shall develop referral procedures for all SIL Ombuds programs to refer any complaint to any appropriate federal, state, or local government agency.

Additional Senior Independent Living Ombuds Provisions. No SIL Ombuds is liable for good faith performance of its responsibilities.

No discriminatory, disciplinary, or retaliatory action may be taken against any CCRC employee, resident, or volunteer, for any communication made, or information given or disclosed, to aid a SIL Ombuds in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.

All communications by a SIL Ombuds, if reasonably related to the requirements of the responsibilities of that individual and done in good faith, are privileged and that privilege shall serve as a defense to any action in libel or slander.

A representative of the State Office of the SIL Ombuds is exempt from being required to testify in court as to any confidential matters except as the court may deem necessary to enforce the responsibilities and duties of the office.

All records and files of a SIL Ombuds relating to any complaint or investigation made pursuant to carrying out the ombuds' duties and the identities of complainants, witnesses, or residents must remain confidential unless disclosure is authorized by the resident or the resident's guardian or legal representative. No disclosures may be made outside the Office of the State SIL Ombuds without the consent of any named witnesses, resident, or complainant unless the disclosure is made without the identity of any of these individuals being disclosed.

Every CCRC provider shall post in a conspicuous location in every building containing any senior independent living unit a notice of the name, address, and phone number of the office

of the appropriate SIL Ombuds and a brief description of the services provided by the office. The form of the notice shall be approved by the Office of the State SIL Ombuds.

Senior Independent Living Ombuds Work Group. The SIL Ombuds must convene a work group to study the data needs related to the oversight of CCRCs with respect to their independent living residents and to analyze the resulting data. The SIL Ombuds must submit a report to the Legislature outlining the work group's findings and recommendations by October 1, 2028.

The work group's purpose is to enhance the understanding about CCRCs including:

- addressing the lack of a single source of information related to CCRC resident complaints which is needed to track what issues may exist and what is the volume and frequency of those issues;
- identifying how the experience of the independent living residents in CCRCs in Washington State compare to the CCRC residents in other states; and
- evaluating and developing a reliable set of data in order to inform oversight decisions.

The work group must:

- define what type of data should be collected and is needed for regulatory monitoring and oversight, which may include but is not limited to performing research and conducting gap analysis between current and future states;
- define data output requirements such as the occurrence and frequency with which the data may be published;
- define report requirements such as data reporting standards and governance;
- identify demographic data on CCRC residents, specifically those residents residing in the independent living sections; and
- identify trends of experiences from CCRC residents, specifically those residents residing in the independent living section.

The SIL Ombuds may:

- collaborate with DSHS to request that the applicants for an initial or renewal registration as a CCRC provide additional data as part of the registration process to ensure the work group has adequate information to complete the work group's duties; and
- consult with AGO as needed to understand the complaint data from the consumer resource center.

Definitions. "Additional fee" means an amount that a CCRC may require a contractual resident or member to pay in accordance with a residency agreement for services made available but not covered by the entrance fee, application fee, or rental or lease payments. This includes, but is not limited to, additional meals, use of a carport or similar infrastructure, and health care services not covered by the entrance fee or residency agreement.

"Noncontractual resident" means a person who lives in a CCRC without a residency agreement that outlines health care services covered by their entrance fee. Noncontractual residents typically pay for all health care services received on a fee-for-service basis.

"Residency agreement" means a contract between a CCRC and a resident for the provision of ongoing health care and assistance with activities of daily living as the resident requires them for a period of greater than one year. A residency agreement must include language that guarantees certain health and long-term care services to the resident based on the entrance fee or fee-for-service of the resident. Residency agreements must also include language outlining when a portion of the entrance fee will be returned to the resident based on termination or unavailability of contracted services.

Appropriation: None.

Fiscal Note: Requested on February 6, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill increases financial transparency and oversight for CCRCs. Currently, when a CCRC submits their registration documents, the agency just has to check that the application and requirements are complete. This bill enhances current regulations, which are important to seniors. The state needs to protect seniors who live in CCRCs as there are facilities who are no longer registered as CCRCs but are still operating as one. Residents sign up with an offer of various levels of care and when a CCRC fails or goes into receivership, the residents do not get a refund from management and they also must find a new place to live as the services they need are no longer available. It's important that people are getting the care that they paid for and this bill is about providing transparency and consistency for the seniors in the state.

OTHER: As written, the bill is implementable and consistent with the report recommendations. There would need to be funding for the agency to accomplish this work and as there is a focus on financial solvency and significant oversight of CCRCs, there is a need to contract with a firm that has the specific expertise. There are concerns that the bill focuses on only one type of contract and additional metrics should be considered to ensure financial oversight. Also, there are also concerns about provisions in the bill related to lifetime care guarantee, the role of residents in the day to day business operations, the future development of CCRCs, and other financial reporting requirements.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; Laura Saunders, WaCCRA Washington Continuing Care Residents Association; Kim Hickman, WaCCRA Washington Continuing Care Residents Association; Mary Baroni, WaCCRA Washington Continuing Care Residents Association; Donna Kristaponis, WACCRA; Cathleen MacCaul,

AARP Washington State.

OTHER: Alyssa Odegaard, LeadingAge Washington; Kevin McFeely, Futura Age; Bea Rector, Dept. of Social and Health Services; Amy Abbott, Dept. of Social and Health Services Aging and Long-Term Supports Administration (DSHS ALTSA).

Persons Signed In To Testify But Not Testifying: No one.