
SENATE BILL 5796

State of Washington

66th Legislature

2019 Regular Session

By Senators Dhingra, Pedersen, and Palumbo

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; adding a new section to
4 chapter 18.390 RCW; adding a new chapter to Title 43 RCW; and
5 providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that protecting
8 seniors, people with disabilities, and other individuals who wish to
9 age in place is a priority for the state, and that the older
10 Americans act of 1965 required the creation of Washington's long-term
11 care ombuds program to effectively assist individuals living in long-
12 term care facilities in the assertion of their civil and human
13 rights. The legislature further finds that it is necessary to explore
14 how the services of the long-term care ombuds could benefit
15 individuals who live in continuing care retirement communities, which
16 are a hybrid of independent living arrangements and long-term care
17 settings. The independent residents of continuing care retirement
18 communities have needs that are similar to those of long-term care
19 residents, and are often compounded by the unique financial and
20 contractual agreements between residents and the continuing care
21 retirement community, including the significant investment of an

1 individual's lifelong savings into such an arrangement. The
2 legislature, therefore, finds that it is appropriate to provide the
3 independent residents of continuing care retirement communities with
4 access to the Washington state long-term care ombuds program and
5 direct the long-term care ombuds to pilot a demonstration serving the
6 unique financial needs of independent continuing care retirement
7 community residents.

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

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

16 **Sec. 2.** RCW 18.390.010 and 2016 c 183 s 1 are each amended to
17 read as follows:

18 The definitions in this section apply throughout this chapter
19 unless the context clearly requires otherwise.

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

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

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

30 (4) "Continuing care retirement community" means an entity that
31 agrees to provide continuing care to a resident under a residency
32 agreement. "Continuing care retirement community" does not include an
33 assisted living facility licensed under chapter 18.20 RCW that does
34 not directly, or through a contractual arrangement with a separately
35 owned and incorporated skilled nursing facility, offer or provide
36 services under chapter 74.42 RCW.

37 (5) "Department" means the department of social and health
38 services.

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

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

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

15 (9) "Resident" means a person who enters into a residency
16 agreement with a continuing care retirement community or who is
17 designated in a residency agreement to be a person being provided
18 with continuing care.

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

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

25 (12) "Management contract" means a management, service, or
26 incentive payment contract between a management company and a
27 continuing care retirement community under which the management
28 company provides services or products for the continuing care
29 retirement community.

30 **Sec. 3.** RCW 18.390.030 and 2016 c 183 s 3 are each amended to
31 read as follows:

32 (1) An applicant for a registration as a continuing care
33 retirement community must submit the following materials to the
34 department:

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

37 (b) Information about the licensed assisted living facility
38 component of the continuing care retirement community and, if the

1 continuing care retirement community operates a nursing home,
2 information about that component;

3 (c) Copies of any (i) residency agreements and (ii) service or
4 care agreements used for nonindependent residents that the continuing
5 care retirement community intends to use for the certification
6 period. The agreements must be clear and complete and must detail the
7 mutual expectation and obligation of the residents and the continuing
8 care retirement community. Modifications of the agreements must be
9 submitted to the department within sixty days following
10 implementation of the modifications;

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

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

19 (ii) If the continuing care retirement community:

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

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

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

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

36 (h) (i) A copy of the most recent actuarial report.

37 (ii) The most recent actuarial report may not have been prepared
38 as of a date more than three years prior to the date when the
39 continuing care retirement community applied for its current
40 registration, except that the preparation date may be extended to no

1 more than five years if the continuing care retirement community's
2 most recent audited financial statement shows a surplus and if its
3 three most recent audited financial statements show positive
4 operating earnings. The continuing care retirement community shall
5 redact any information that contains personal financial or health
6 care information related to any resident.

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. 4.** 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 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.390
6 RCW to read as follows:

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

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

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

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

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

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

27 (a) The names of the individual or individuals who constitute the
28 continuing care retirement community and each of the officers,
29 directors, trustees, or managing general partners of the legal entity
30 and a description of each individual's duties on behalf of the legal
31 entity;

32 (b) The business address of the continuing care retirement
33 community;

34 (c) The type of ownership, the names of the continuing care
35 retirement community's owner and operator, and the names of any
36 affiliated facilities;

37 (d) The names and business addresses of any individual having any
38 more than a ten percent direct or indirect ownership or beneficial

1 interest in the continuing care retirement community, the percentage
2 of the direct or indirect ownership or beneficial interest, and a
3 description of each individual's interest in or occupation with the
4 continuing care retirement community;

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

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

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

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

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

15 (f) An explanation of the continuing care retirement community's
16 policy regarding placement in off-campus assisted living facilities
17 and nursing homes and the payment responsibilities of the continuing
18 care retirement community and the resident in the event of off-campus
19 placement;

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

24 (h) An explanation of all types of fees charged by the continuing
25 care retirement community, how each type of fee is determined,
26 current ranges for each type of fee, and refund policies for each
27 type of fee;

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

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

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

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

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

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

9 (m) (i) The continuing care retirement community's two most recent
10 annual audited financial statements prepared in accordance with
11 generally accepted accounting principles by a certified public
12 accountant. The most recently audited financial statement may not
13 have been prepared more than eighteen months prior to the date that
14 the continuing care retirement community applied for its current
15 registration.

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

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

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

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

38 (A) Has obtained financing, but does not have two years of
39 audited financial statements as required under (m) (i) of this
40 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 in satisfactory
6 actuarial balance; and

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

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

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

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

31 (3) Prior to entering into a residency agreement with, or
32 accepting an entrance fee from, any prospective resident, a
33 continuing care retirement community must deliver to the prospective
34 resident a copy of the disclosure statements of the continuing care
35 retirement community, as most recently submitted to the department,
36 updated to the date of delivery with information that is material to
37 the prospective resident's decision to become a resident.

38 (4) For the purposes of this section, in addition to the meaning
39 in RCW 18.390.010, the term "continuing care retirement community"
40 also includes any entity that manages or operates, or has a

1 significant role in the management or operation of, an entity that
2 agrees to provide continuing care to a resident under a residency
3 agreement.

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

6 (1) A prospective resident may visit each of the different care
7 levels of the continuing care retirement community, assisted living
8 facility, and nursing home, and may inspect the most recent
9 inspection reports and findings of complaint investigations related
10 to the assisted living and nursing home components covering a period
11 of not less than two years, as available, prior to signing a
12 residency agreement.

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

16 (a) Transparency regarding the financial stability of the
17 provider operating the facility;

18 (b) Timely notifications of developments affecting the facility,
19 including ownership changes of the provider operating the facility, a
20 change in the financial condition of the provider operating the
21 facility, and construction and renovation at the facility. The
22 management of the continuing care retirement community may deem
23 certain information to be confidential if it is of a sensitive nature
24 such that disclosure of the information would materially harm the
25 position of the continuing care retirement community;

26 (c) Reasonable accommodations for persons with disabilities;

27 (d) The opportunity to participate freely in the operation of
28 independent residents' organizations and associations and the
29 opportunity of each resident to participate meaningfully in decisions
30 affecting the resident's health, welfare, and financial security;

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

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

38 (g) For any residency agreements entered into after December 31,
39 2019, that provide for refundable entrance fees, the assurance that:

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

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

8 (iii) Refunds due to a resident must be paid no later than the
9 earlier of (A) two years following the resident's departure or death,
10 or (B) when the resident's unit is reoccupied and the resident is no
11 longer living in the continuing care retirement community. The
12 continuing care retirement community shall maintain a current list of
13 vacant units, the dates on which the units became vacant, and the
14 prices at which the units are being offered to prospective residents.
15 A copy of the list must be provided upon request to any current
16 resident of the independent living portion of a continuing care
17 retirement community and any prior resident of the independent living
18 portion of a continuing care retirement community who has not
19 received the full refundable portion of the resident's entrance fees;
20 and

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

29 (3) The continuing care retirement community shall:

30 (a) Provide a copy of the expectations specified in this section
31 to each prospective resident prior to signing a residency agreement;
32 ((and))

33 (b) Notify independent residents that audited financial
34 statements and actuarial evaluations are available to such residents
35 within thirty days after such statements and evaluations are
36 delivered to its chief financial officer; and

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

1 residents. The copies of the expectations must also state that, in
2 addition to all other rights provided by law, independent residents
3 have the right, as an affected party, to file a complaint with the
4 attorney general for violations of this chapter that may constitute a
5 violation of the consumer protection act and contain information
6 explaining how and where a complaint may be filed.

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

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

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

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

4 **Sec. 9.** RCW 18.390.900 and 2016 c 183 s 10 are each amended to
5 read as follows:

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

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

11 NEW SECTION. **Sec. 10.** The definitions in this section apply
12 throughout this chapter unless the context clearly requires
13 otherwise.

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

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

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

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

23 NEW SECTION. **Sec. 11.** (1) The department and the private
24 nonprofit organization that contracts with the department to provide
25 long-term care ombuds services shall enter into a separate contract
26 for additional services. The contract must enable the state long-term
27 care ombuds to provide services to the residents of continuing care
28 retirement communities through a pilot project in a county with over
29 one million five hundred thousand residents that has a suitable
30 concentration of continuing care retirement communities for a period
31 of two years.

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

34 (a) Identifies, investigates, and resolves complaints made by or
35 on behalf of independent residents relating to actions or inactions
36 that may adversely affect such a resident's health, safety, welfare,
37 rights, or financial well-being including, but not limited to,

1 matters involving evictions, involuntary relocation to a higher level
2 of care, refusal to relocate to a higher level of care, physical
3 conditions of facility, and difficulties encountered in obtaining
4 services;

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

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

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

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

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

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

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

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

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

31 (6) This section expires July 1, 2022.

32 NEW SECTION. **Sec. 12.** Sections 1, 10, and 11 of this act
33 constitute a new chapter in Title 43 RCW.

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