

House Bill 2392
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

SECTION 1. Section 246.002, Health and Safety Code, is amended by amending Subdivision (6) and adding Subdivision (8-a) to read as follows:

(6) "Facility" means each separate, administratively independent [a] place in which a person provides continuing care to an individual.

(8-a) "Marketing activities" means activities undertaken by a provider to secure continuing care contracts for occupancy of a facility by residents.

No equivalent provision.

SECTION 2. Section 246.073(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Subsection (b), an escrow agent shall release an entrance fee to the provider if:

(1) a minimum of 50 percent of the number of living units in the facility have been reserved for residents, as evidenced by:

(A) uncanceled executed continuing care contracts with those residents; and

(B) for each continuing care contract:

(i) the receipt by the agent of an entrance fee deposit [~~deposits~~] of at least 10 percent of the entrance fee designated in the [~~each continuing care~~] contract; or

(ii) a specific living unit assigned to a resident and available for occupancy;

(2) the total amount of aggregate entrance fees received or receivable by the provider under binding continuing care contracts, the anticipated proceeds of any first mortgage loan or other long-term financing commitment

No equivalent provision.

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described under Subdivision (3), and funds from other sources in the actual possession of the provider are equal to or more than the total amount of:

(A) 90 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility, or in the case of a leased facility, 90 percent of the total first year lease;

(B) 90 percent of the funds estimated, in the statement of anticipated source and application of funds included in the disclosure statement, to be necessary to cover initial losses of the facility; and

(C) 90 percent of the amount of any loan reserve fund escrow required to be maintained by the provider under Section 246.077; and

(3) a commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement and any conditions of the commitment before disbursement of funds have been substantially satisfied, other than completion of the construction or closing on the purchase of the facility, [;] and:

(A) if construction of the facility has not been substantially completed:

(i) all necessary government permits or approvals have been obtained;

(ii) the provider and the general contractor responsible for construction of the facility have entered into a maximum price contract;

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- (iii) a recognized surety authorized to do business in this state has executed in favor of the provider a bond covering faithful performance of the construction contract by the general contractor and the payment of all obligations under the contract;
 - (iv) the provider has entered a loan agreement for an interim construction loan in an amount that, when combined with the amount of entrance fees in escrow plus the amount of funds from other sources in the actual possession of the provider, equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility;
 - (v) the lender has disbursed not less than 10 percent of the amount of the construction loan for physical construction or completed site preparation work; and
 - (vi) the provider has placed orders at firm prices for not less than 50 percent of the value of items necessary for equipping and furnishing the facility in accordance with the description in the disclosure statement, including any installation charges; or
- (B) if construction or purchase of the facility has been substantially completed:
- (i) an occupancy permit covering the living unit has been issued by the local government that has authority to issue the permit; and
 - (ii) if the entrance fee applies to a living unit that has been previously occupied, the living unit is available for occupancy by the new resident.

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SECTION 3. Subchapter D, Chapter 246, Health and Safety Code, is amended by adding Section 246.0735 to read as follows:

Sec. 246.0735. CONTINUING RELEASE OF ESCROW. (a) After the initial release of an entrance fee by an escrow agent for a specific facility, the board shall authorize an escrow agent to continue to release escrowed entrance fees for that facility to the provider without further proof of satisfying the requirements of Section 246.073 if:

(1) the provider provides a monthly report to the department on marketing activities for living units of the facility; and

(2) the provider immediately informs the department of any problems, issues, or irregularities encountered in its marketing activities for the facility.

(b) If the provider fails to meet the requirements of Subsection (a), the board may require the provider to satisfy the requirements of Section 246.073 before the board authorizes the escrow agent to continue releasing escrowed entrance fees to the provider.

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SECTION 1. Subchapter D, Chapter 246, Health and Safety Code, is amended by adding Sections 246.0735 and 246.0736 to read as follows:

Sec. 246.0735. PHASE-IN FACILITIES. The commissioner may create requirements for escrow release different from those under Section 246.073 for facilities that obtain a certificate of authority issued under this subchapter before the commencement of facility construction. A facility that meets the commissioner's requirements under this section is not required to satisfy Section 246.073.

Sec. 246.0736. CONTINUING RELEASE OF ESCROW. (a) After the initial release of an entrance fee by an escrow agent for a specific facility, the commissioner shall authorize an escrow agent to continue to release escrowed entrance fees for that facility to the provider without further proof of satisfying the requirements of Section 246.073 if:

(1) the provider provides a monthly report to the department on marketing activities for living units of the facility; and

(2) the provider immediately informs the department of any problems, issues, or irregularities encountered in its marketing activities for the facility.

(b) If the provider fails to meet the requirements of Subsection (a), the commissioner may require the provider to satisfy the requirements of Section 246.073 before the commissioner authorizes the escrow agent to continue releasing escrowed entrance fees to the provider.

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(c) The board shall adopt rules to implement this section.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

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(c) The commissioner shall adopt rules to implement this section.

SECTION 2. Same as House version.

CONFERENCE