

## **BILL ANALYSIS**

C.S.S.B. 1522  
By: Perry  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Continuing care retirement communities (CCRCs) are primarily faith-based, mission-driven organizations that receive a certificate of authority from the Texas Department of Insurance (TDI) to provide easily accessible, progressive levels of care to older Texans. CCRCs typically offer independent living, assisted living, skilled nursing services, and other levels of care in one community to allow for a smooth transition across the continuum of care. However, the bill sponsor has informed the committee that much of the language governing CCRCs has not been updated in many years, leading to a gap in statutory guidance for CCRCs and the provision of long-term care, and that low reimbursement rates and cumbersome federal regulations are pushing CCRCs to gradually move away from skilled nursing to invest further in memory care, home and community-based services, and hospice. The bill sponsor has further informed the committee that vague definitions in current law have led to confusion among providers about whether they need to register as a CCRC, specifically for independent living communities that do not offer the full continuum of care typically provided in a CCRC but do furnish a living unit and offer other services like food delivery or Life Alert Emergency Response, and that current law does not specifically prohibit properties on leased land from becoming CCRCs, creating the potential for disruptions to residents' health and financial well-being if a provider faces solvency issues or a land agreement is terminated.

C.S.S.B. 1522 seeks to create greater transparency and protections for seniors by, among other provisions, clarifying the definition of "continuing care" to focus TDI regulation on providers promising priority, guaranteed, or discounted access to progressive levels of health care and by requiring an entrance fee to be returned to a prospective resident if the resident dies before taking occupancy of the unit, if construction of the unit is indefinitely paused or if a continuing care contract is rescinded.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 1522 amends the Health and Safety Code to revise and update provisions of the Texas Continuing Care Facility Disclosure and Rehabilitation Act.

## Definitions

C.S.S.B. 1522 updates the term "continuing care" by doing the following:

- removing the current provision defining such care to mean the furnishing of a living unit, together with personal care services, nursing services, medical services, or other health-related services, regardless of whether the services and the living unit are provided at the same location to an individual who is not related by consanguinity or affinity, as determined under applicable state law, to the person furnishing the care and under a continuing care contract; and
- providing instead that such care means to provide the following care under a continuing care contract to an individual who is not related by consanguinity or affinity, as determined under applicable state law, to the person providing the care:
  - the furnishing of a living unit and related services; and
  - an agreement to provide priority, guaranteed, or discounted access to progressive levels of health care services to an individual as necessary, regardless of whether the services are provided at the same facility in which the living unit is located or whether the services are provided through a contract with a third party, including the provision of health care services as follows:
    - in an assisted living facility or nursing facility; and
    - by a home and community support services agency, defined by reference to statutory provisions governing licensed home and community support services.

The bill further clarifies that the term includes the furnishing of services under a continuing care contract with an agreement to provide priority, guaranteed, or discounted access to progressive levels of health care services to an individual as necessary to enable the individual to remain in the individual's residence.

The bill defines "assisted living facility" by reference to the meaning assigned the term in the Assisted Living Facility Licensing Act and "nursing facility" by reference to the meaning assigned that term by applicable state law governing licensed convalescent and nursing facilities and related institutions. Moreover, the bill updates certain of the act's definitions to provide the following:

- "board" means the Texas Department of Insurance (TDI);
- "entrance fee" applies to an initial or deferred transfer of money or other property valued at an amount exceeding three months' payments for residency in a living unit and related services at an applicable facility and does not include amounts paid for an optional modification to a living unit under an agreement separate from a continuing care contract;
- "facility" includes an individual's residence; and
- "living unit" does not include a room, apartment, cottage, or other area that is in a nursing facility or assisted living facility.

## Rights of Residents

C.S.S.B. 1522 replaces the provision entitling a resident receiving care in a portion of a facility licensed to provide nursing home care, personal care, or custodial care to all statutory rights provided to a nursing home, personal care, or custodial care resident with a provision entitling a resident receiving care in a portion of a facility licensed to provide nursing home care or assisted living services to all statutory rights provided to a resident of a nursing home or an assisted living facility, as applicable. Moreover, the bill does the following:

- prohibits a continuing care contract or reservation agreement from prohibiting residents from assembling; and
- requires a facility to provide to a resident, prospective resident, or designated agent of a resident or prospective resident, on request, an electronic or hard copy of the most recent revised annual disclosure statement filed by the provider with TDI.

## **Applicability**

C.S.S.B. 1522 makes the Texas Continuing Care Facility Disclosure and Rehabilitation Act expressly inapplicable to an admission or residence agreement offered by a residential community that charges an entrance fee if the following conditions apply:

- residents of the residential community pay for available assisted living services and nursing home care on a fee-for-service basis;
- fees for available assisted living services and nursing home care are the same for a prospective resident as a current resident of the living unit; and
- the admission or residence agreement includes the following statement or a substantially equivalent statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"A continuing care contract provides priority, guaranteed, or discounted access to progressive levels of health care services.

\_\_\_\_\_ (Name of community or facility) is not a licensed continuing care facility and does not hold a certificate of authority from the Texas Department of Insurance. This agreement is not a continuing care contract and is exempt from the requirements of Chapter 246, Health and Safety Code."

## **Application For and Issuance of Certificate of Authority**

C.S.S.B. 1522 authorizes the commissioner of insurance to reject an application for a certificate of authority under the act if the applicant does not own the real property on which the facility is located or proposed to be located.

## **Advertisement in Conflict With Disclosures**

C.S.S.B. 1522 prohibits a person from using the title "continuing care facility" or "continuing care retirement community" in advertising materials unless the person holds a certificate of authority issued under the act.

## **Rescission of Contract; Required Language**

C.S.S.B. 1522 replaces the requirement for a contracting continuing care provider, if a continuing care contract is rescinded under the act, to refund not later than the 30th day after the date of rescission any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, with a requirement for the provider, if a continuing care contract is rescinded under the act, to refund the entrance fee not later than that date. The bill, with respect to the statement that must be included in a contract regarding contract cancellation, accordingly replaces the specification that a person will be entitled to receive a refund of all assets transferred other than periodic charges applicable to the person's occupancy of a living unit with a specification that a person will be entitled to receive a refund of the entrance fee.

## **Cancellation of Contract: Death or Incapacity Before Occupancy**

C.S.S.B. 1522, in the act's provision establishing that a resident or the resident's legal representative, if a continuing care contract is canceled under the act because of death or incapacity before occupancy, is entitled to a refund of all money or property transferred to the provider minus certain nonstandard costs and a reasonable service charge, adds a provision also deducting from that refund any money transferred to the provider for optional modifications to the resident's or prospective resident's living unit under an agreement that is separate from the continuing care contract.

## **Entrance Fee Escrow Account; Escrow Agent**

C.S.S.B. 1522, with respect to the act's requirement for a provider to establish an entrance fee escrow account with a bank or trust company, as escrow agent, that is located in Texas before a provider may accept the payment of a deposit made under a reservation agreement or any portion of an entrance fee, replaces that provision with a provision clarifying that, if the provider accepts the payment of a deposit made under a reservation agreement or any portion of an entrance fee before the date the prospective resident may occupy a living unit, the provider must establish an entrance fee escrow account with a bank or trust company, as escrow agent, that is located in Texas.

## **Return of Deposits; Release or Return of Entrance Fee**

C.S.S.B. 1522, with respect to the act's requirement for the escrow agent, on a written request from or on behalf of the provider or a prospective resident, to return the amount on deposit to the person who paid the deposit or to maintain the deposit as an entrance fee in the entrance fee escrow account, does the following:

- removes the requirement for the escrow agent to maintain the deposit as an entrance fee in the entrance fee escrow account; and
- conditions the requirement to return the amount on deposit to the person who paid the deposit on the reservation agreement being terminated before the prospective resident occupies the living unit.

The bill revises the related requirement for an escrow agent, unless the agent receives a written request from or on behalf of a provider or a resident for the return of an entrance fee under the act's contract rescission provision, as amended by the bill, to release the fee to the provider or place the fee in a loan reserve fund escrow by doing the following:

- specifying that the agent is required to do so at the provider's discretion; and
- replacing the reference to the act's contract rescission provision, as amended by the bill, with a reference to the act's provision, as amended by the bill, requiring the escrow agent to return the amount on deposit to the person who paid the deposit if the reservation agreement is terminated before the prospective resident occupies the living unit.

## **Release to Provider For New Facility or Expansion**

C.S.S.B. 1522 makes the act's provisions regarding the mandatory return of an entrance fee applicable only to a newly constructed facility or an expansion of an existing facility in which the number of existing living units is increased by 50 percent or more. The bill does the following with respect to the act's current requirement for an escrow agent to release an entrance fee to the provider under specified conditions:

- with respect to the condition requiring the release if a minimum of 50 percent of the number of living units in the facility have been reserved for residents as evidenced by uncanceled executed continuing care contracts with those residents and the receipt by the escrow agent of entrance fee deposits of at least 10 percent of the entrance fee designated in each continuing care contract, specifies that release is required if that minimum is evidenced by:
  - reservation agreements, as an alternative to being evidenced by the uncanceled unexecuted contracts; and
  - the receipt by the agent of entrance fee deposits of at least 10 percent of the entrance fee designated for each reserved living unit, rather than the amount designated in each continuing care contract;
- with respect to the condition requiring release if the total amount of aggregate entrance fees received or receivable by the provider under binding continuing care contracts, the anticipated proceeds, as applicable, of any first mortgage loan or other long-term financing commitment and funds from other sources in the actual possession of the provider are equal to or more than certain total amounts, specifies that the condition is applicable to the total amount of aggregate entrance fees received or receivable by the

provider under binding reservation agreements, as an alternative to the total amount of aggregate entrance fees received or receivable by the provider under binding continuing care contracts; and

- with respect to the condition requiring release if 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 if construction has not been substantially completed, certain other criteria have been met, removes the specification that completion is substantial completion.

### **Continuing Release of Escrow**

C.S.S.B. 1522, with respect to the requirement for the commissioner of insurance, after the initial release of an entrance fee by an escrow agent for a specific facility, to 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 the act's provision, as amended by the bill, requiring release of an entrance fee to the provider under certain conditions, does the following:

- subjects the initial release of an entrance fee by an escrow agent for a specific facility to those provisions of the act as amended by the bill; and
- includes a specification that the commissioner take such action before construction of the facility is completed.

The bill establishes that, after construction on such a facility is completed, all necessary occupancy permits for the facility have been issued by the local government that has authority to issue permits, and all living units in the facility are available for occupancy, the release of escrowed entrance fees for the facility is governed by the act's provisions, as amended by the bill, relating to return of deposits and the release or return of an entrance fee.

### **Return of Entrance Fee**

C.S.S.B. 1522, with respect to the act's requirement for the escrow agent to return an entrance fee to the person who paid it if the fee is not released to the provider or placed in the loan reserve fund escrow required under the act's provision, as amended by the bill, regarding the reserve fund escrow within 36 months after the date on which any portion of the entrance fee is received by the provider or a longer time specified by the provider in the disclosure statement delivered with the continuing care contract under which the fee was paid, does the following:

- makes the provision applicable if the fee is not released to the provider or placed in the loan reserve fund escrow not later than 36 months after the date on which any such portion is received by the provider;
- in the alternative, makes the provision applicable if the fee is not released within the time period, rather than within a longer time as provided in current law, specified by the provider in the applicable disclosure statement if the specified time period is longer than the aforementioned time period; and
- includes as an alternative to either of those time periods that the agent return an entrance fee to the person, if any of the following events occur, as soon as practicable after the date the event occurs:
  - the prospective resident dies before occupying a unit;
  - construction on a facility not yet in operation is stopped indefinitely before the facility is completed; or
  - a continuing care contract is rescinded under the act's provisions, as amended by the bill, relating to such rescission.

## **Escrow of Certain Fees Not Required**

C.S.S.B. 1522 establishes that the act's provisions, as amended by the bill, relating to entrance fee and reserve fund escrow accounts, do not require the escrow of a waitlist fee or a similar fee of \$1,000 or less.

## **Reserve Fund Escrow**

C.S.S.B. 1522, with respect to the act's authorization for the loan reserve fund escrow amount, at the option of the facility, to exclude the portion of principal and interest payments applicable to that portion of the facility that is a licensed nursing home, makes the authorization applicable instead to that portion of the facility that is a licensed nursing facility or licensed assisted living facility.

## **Actuarial Review**

C.S.S.B. 1522 revises the act's provisions relating to the actuarial review of a facility whose contracts offer future guarantees of long-term nursing care that develop current actuarial liabilities as follows:

- updates the requirement for an applicable facility that initially filed with the commissioner of insurance an actuarial review performed on or after September 1, 1982, and before September 1, 1987, to file with the commissioner subsequent actuarial reviews at five-year intervals from the date of completion of the initial actuarial review to require an applicable facility to file with the commissioner actuarial reviews at least once every five years;
- replaces the authorization for the commissioner to require an actuarial review of a facility before the end of the five-year interval in which the facility would otherwise be required to file an actuarial review under certain conditions with an authorization for the commissioner to require an actuarial review of a facility more often than once every five years under those conditions; and
- includes among the conditions under which the commissioner may require an actuarial review of a facility more often than once every five years that the facility leases from a third party any portion of the grounds on which the facility is located or buildings in which the facility operates.

Accordingly, the bill repeals the provision requiring a facility that initially filed with the commissioner an actuarial review performed on or after September 1, 1987, to file with the commissioner subsequent actuarial reviews at five-year intervals from the date of the filing of the initial actuarial review.

## **Repealed Provision**

C.S.S.B. 1522 repeals Section 246.114(c), Health and Safety Code.

C.S.S.B. 1522 applies only to a provider that is issued a certificate of authority under applicable state law on or after January 1, 2026. A provider that is issued a certificate of authority before that date is governed by the law in effect immediately before January 1, 2026, and the former law is continued in effect for that purpose.

## **EFFECTIVE DATE**

January 1, 2026.

## **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1522 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute revises the act's definition of "facility," whereas the engrossed did not.