

By: Perry

S.B. No. 1522

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of continuing care facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 246.002, Health and Safety Code, is amended by amending Subdivisions (1), (5), and (7) and adding Subdivisions (1-a) and (8-a) to read as follows:

(1) "Assisted living facility" has the meaning assigned by Section 247.002.

(1-a) "Board" means the Texas Department [~~State Board~~] of Insurance.

(5) "Entrance fee" means 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 a facility [~~rent or services,~~] made, or promised to be made, as full or partial consideration for acceptance by a provider of a specified individual entitled to receive continuing care under a continuing care contract. The term does not include a deposit made under a reservation agreement or amounts paid for an optional modification to a living unit under an agreement separate from a continuing care contract.

(7) "Living unit" means a room, apartment, cottage, or other area that is in a facility and that is set aside for the exclusive use or control of one or more specified individuals. The term does not include a room, apartment, cottage, or other area that

1 is in a nursing facility or assisted living facility.

2 (8-a) "Nursing facility" has the meaning assigned by
3 Section 242.301.

4 SECTION 2. Section 246.0025, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 246.0025. DEFINITION OF CONTINUING CARE. (a) In this
7 chapter, "continuing care" means to provide the following care
8 under a continuing care contract to an individual who is not related
9 by consanguinity or affinity, as determined under Chapter 573,
10 Government Code, to the person providing the care:

11 (1) the furnishing of a living unit and related
12 services; and

13 (2) an agreement to provide priority, guaranteed, or
14 discounted access to progressive levels of health care services to
15 an individual as necessary~~[, together with personal care services,~~
16 ~~nursing services, medical services, or other health-related~~
17 ~~services]~~, regardless of whether the services are provided at the
18 same facility in which ~~[and]~~ the living unit is located or whether
19 the services are provided through a contract with a third party,
20 including the provision of health care services:

21 (A) in an assisted living facility or nursing
22 facility; and

23 (B) by a home and community support services
24 agency, as defined by Section 142.001 ~~[are provided at the same~~
25 ~~location.~~

26 ~~[(1) to an individual who is not related by~~
27 ~~consanguinity or affinity, as determined under Chapter 573,~~

1 ~~Government Code, to the person furnishing the care, and~~

2 ~~[(2) under a continuing care contract].~~

3 (b) The term "continuing care" includes the furnishing of
4 services under a continuing care contract with an agreement to
5 provide priority, guaranteed, or discounted access to progressive
6 levels of health care services to an individual as necessary,
7 ~~[described by Subsection (a)]~~ to enable ~~[an individual in the~~
8 ~~individual's residence or otherwise enabling]~~ the individual to
9 remain in the individual's residence.

10 SECTION 3. Section [246.004](#), Health and Safety Code, is
11 amended to read as follows:

12 Sec. 246.004. RIGHTS OF RESIDENTS. (a) A resident
13 receiving care in a portion of a facility licensed to provide
14 nursing home care~~[, personal care,]~~ or assisted living services
15 ~~[custodial care]~~ is entitled to all statutory rights provided to a
16 resident of a nursing home~~[, personal care,]~~ or an assisted living
17 facility, as applicable ~~[custodial care resident]~~.

18 (b) A continuing care contract or reservation agreement may
19 not prohibit residents from assembling.

20 (c) A facility shall provide to a resident, prospective
21 resident, or designated agent of a resident or prospective
22 resident, on request, an electronic or hard copy of the most recent
23 revised disclosure statement filed by the provider under Section
24 [246.054](#).

25 SECTION 4. Subchapter [B](#), Chapter [246](#), Health and Safety
26 Code, is amended by adding Section 246.0215 to read as follows:

27 Sec. 246.0215. APPLICABILITY. This chapter does not apply

1 to an admission or residence agreement offered by a residential
2 community that charges an entrance fee if:

3 (1) residents of the residential community pay for
4 available assisted living services and nursing home care on a
5 fee-for-service basis;

6 (2) fees for available assisted living services and
7 nursing home care are the same for a prospective resident as a
8 current resident of the living unit; and

9 (3) the admission or residence agreement includes the
10 following statement or a substantially equivalent statement in type
11 that is boldfaced, capitalized, underlined, or otherwise set out
12 from the surrounding written material so as to be conspicuous:

13 "A continuing care contract provides priority,
14 guaranteed, or discounted access to progressive levels of health
15 care services. _____ (Name of community or facility) is not
16 a licensed continuing care facility and does not hold a certificate
17 of authority from the Texas Department of Insurance. This
18 agreement is not a continuing care contract and is exempt from the
19 requirements of Chapter 246, Health and Safety Code."

20 SECTION 5. Section 246.022, Health and Safety Code, is
21 amended by amending Subsection (c) and adding Subsection (c-1) to
22 read as follows:

23 (c) Except as provided by Subsection (c-1), the ~~[The]~~
24 commissioner shall grant an application for a certificate of
25 authority if the commissioner finds that:

26 (1) the applicant or the facility is financially
27 sound;

(2) the competence, experience, and integrity of the applicant, its board of directors, its officers, or its management make it in the public interest to issue the certificate; and

(3) the applicant is capable of complying with this chapter.

(c-1) The commissioner may reject an application for a certificate of authority under Subsection (c) if the applicant does not own the real property on which the facility is located or proposed to be located.

SECTION 6. Section 246.055, Health and Safety Code, is amended to read as follows:

Sec. 246.055. ADVERTISEMENT IN CONFLICT WITH DISCLOSURES.

(a) A provider may not engage in any type of advertisement for a continuing care contract or facility if the advertisement contains a statement or representation in conflict with the disclosures required under this subchapter.

(b) A person may not use the title "continuing care facility" or "continuing care retirement community" in advertising materials unless the person holds a certificate of authority issued under this chapter.

SECTION 7. Sections 246.056(c) and (d), Health and Safety Code, are amended to read as follows:

(c) If a continuing care contract is rescinded under this section, the entrance fee ~~[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,~~] shall be refunded not later than the 30th day after

1 the date of rescission.

2 (d) Each continuing care contract must include the
3 following statement or a substantially equivalent statement in type
4 that is boldfaced, capitalized, underlined, or otherwise set out
5 from the surrounding written material so as to be conspicuous:

6 "You may cancel this contract at any time prior to midnight of
7 the seventh day, or a later day if specified in the contract, after
8 the date on which you sign this contract or you receive the
9 facility's disclosure statement, whichever occurs later. If you
10 elect to cancel the contract, you must do so by written notice and
11 you will be entitled to receive a refund of the entrance fee [~~all~~
12 ~~assets transferred other than periodic charges applicable to your~~
13 ~~occupancy of a living unit~~]."

14 SECTION 8. Section 246.057(b), Health and Safety Code, is
15 amended to read as follows:

16 (b) If a continuing care contract is canceled under this
17 section, the resident or the resident's legal representative is
18 entitled to a refund of all money or property transferred to the
19 provider, minus:

20 (1) any nonstandard costs specifically incurred by the
21 provider or facility at the request of the resident that are
22 described in the contract or in an addendum to the contract signed
23 by the resident; [~~and~~]

24 (2) a reasonable service charge, if set out in the
25 contract, that may not exceed the greater of \$1,000 or two percent
26 of the entrance fee; and

27 (3) any money transferred to the provider for optional

1 modifications to the resident's or prospective resident's living
2 unit under an agreement that is separate from the continuing care
3 contract.

4 SECTION 9. Section 246.071(a), Health and Safety Code, is
5 amended to read as follows:

6 (a) If a ~~[Before a]~~ provider accepts ~~[may accept]~~ the
7 payment of a deposit made under a reservation agreement or any
8 portion of an entrance fee before the date the prospective resident
9 may occupy a living unit, the provider must establish an entrance
10 fee escrow account with a bank or trust company, as escrow agent,
11 that is located in this state.

12 SECTION 10. Section 246.072, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 246.072. RETURN OF DEPOSITS; RELEASE OR RETURN OF
15 ENTRANCE FEE. (a) On a written request from or on behalf of the
16 provider or a prospective resident, the escrow agent shall return
17 the amount on deposit to the person who paid the deposit if the
18 reservation agreement is terminated before the prospective
19 resident occupies the living unit ~~[or shall maintain the deposit as~~
20 ~~an entrance fee in the entrance fee escrow account]~~.

21 (b) Unless the escrow agent receives a written request from
22 or on behalf of a provider or a resident for the return of an
23 entrance fee under Subsection (a) ~~[Section 246.056]~~, the agent
24 shall, at the provider's discretion, release the fee to the
25 provider or place the fee in a loan reserve fund escrow.

26 SECTION 11. The heading to Section 246.073, Health and
27 Safety Code, is amended to read as follows:

1 Sec. 246.073. RELEASE TO ~~[THE]~~ PROVIDER FOR NEW FACILITY OR
2 EXPANSION.

3 SECTION 12. Section 246.073, Health and Safety Code, is
4 amended by amending Subsection (a) and adding Subsection (a-1) to
5 read as follows:

6 (a) This section applies only to:

7 (1) a newly constructed facility; or

8 (2) an expansion of an existing facility in which the
9 number of existing living units is increased by 50 percent or more.

10 (a-1) Except as provided by Subsection (b), an escrow agent
11 shall release an entrance fee to the provider if:

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

15 (A) uncanceled executed continuing care
16 contracts or reservation agreements with those residents; and

17 (B) the receipt by the agent of entrance fee
18 deposits of at least 10 percent of the entrance fee designated for
19 each reserved living unit ~~[in each continuing care contract];~~

20 (2) the total amount of aggregate entrance fees
21 received or receivable by the provider under binding continuing
22 care contracts or reservation agreements, the anticipated proceeds
23 of any first mortgage loan or other long-term financing commitment
24 described under Subdivision (3), and funds from other sources in
25 the actual possession of the provider are equal to or more than the
26 total amount of:

27 (A) 90 percent of the aggregate cost of

1 constructing or purchasing, equipping, and furnishing the
2 facility;

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

7 (C) 90 percent of the amount of any loan reserve
8 fund escrow required to be maintained by the provider under Section
9 246.077; and

10 (3) a commitment has been received by the provider for
11 any permanent mortgage loan or other long-term financing described
12 in the statement of anticipated source and application of funds
13 included in the current disclosure statement and any conditions of
14 the commitment before disbursement of funds have been substantially
15 satisfied, other than completion of the construction or closing on
16 the purchase of the facility, ~~and~~ and ~~if~~

17 ~~[(A)]~~ if construction of the facility has not
18 been ~~[substantially]~~ completed:

19 (A) ~~[(i)]~~ all necessary government permits or
20 approvals have been obtained;

21 (B) ~~[(ii)]~~ the provider and the general
22 contractor responsible for construction of the facility have
23 entered into a maximum price contract;

24 (C) ~~[(iii)]~~ a recognized surety authorized to do
25 business in this state has executed in favor of the provider a bond
26 covering faithful performance of the construction contract by the
27 general contractor and the payment of all obligations under the

1 contract;

2 (D) [~~(iv)~~] the provider has entered a loan
3 agreement for an interim construction loan in an amount that, when
4 combined with the amount of entrance fees in escrow plus the amount
5 of funds from other sources in the actual possession of the
6 provider, equals or exceeds the estimated cost of constructing,
7 equipping, and furnishing the facility;

8 (E) [~~(v)~~] the lender has disbursed not less than
9 10 percent of the amount of the construction loan for physical
10 construction or completed site preparation work;

11 (F) [~~and~~
12 ~~(vi)~~] the provider has placed orders at
13 firm prices for not less than 50 percent of the value of items
14 necessary for equipping and furnishing the facility in accordance
15 with the description in the disclosure statement, including any
16 installation charges;

17 (G) [~~or~~
18 ~~(B) if construction or purchase of the facility~~
19 ~~has been substantially completed.~~

20 ~~(i)~~ an occupancy permit covering the
21 living unit has been issued by the local government that has
22 authority to issue the permit; and

23 (H) [~~(ii) if the entrance fee applies to a living~~
24 ~~unit that has been previously occupied,~~] the living unit is
25 available for occupancy by the new resident.

26 SECTION 13. Section [246.0736](#), Health and Safety Code, is
27 amended by amending Subsection (a) and adding Subsection (d) to

read as follows:

(a) After the initial release of an entrance fee by an escrow agent for a specific facility subject to Section 246.073, and before construction of the facility is completed, 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.

(d) After construction on a facility described by Section 246.073(a) 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 Section 246.072.

SECTION 14. Section 246.074, Health and Safety Code, is amended to read as follows:

Sec. 246.074. RETURN OF ENTRANCE FEE. The escrow agent shall 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 Section 246.077 ~~[within]~~:

(1) not later than 36 months after the date on which any portion of the entrance fee is received by the provider; ~~[or]~~

1 (2) within the time period [a longer time] specified
2 by the provider in the disclosure statement delivered with the
3 continuing care contract under which the fee was paid, if the
4 specified time period is longer than the time period under
5 Subdivision (1); or

6 (3) if any of the following events occur, as soon as
7 practicable after the date the event occurs:

8 (A) the prospective resident dies before
9 occupying a unit;

10 (B) construction on a facility not yet in
11 operation is stopped indefinitely before the facility is completed;
12 or

13 (C) a continuing care contract is rescinded under
14 Section 246.056.

15 SECTION 15. Section 246.075, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 246.075. ESCROW OF CERTAIN FEES [~~APPLICATION FEE~~] NOT
18 REQUIRED. This subchapter does not require the escrow of a waitlist
19 fee or a similar fee of \$1,000 or less, or of any nonrefundable
20 portion of a deposit or entrance fee that:

21 (1) does not exceed an amount equal to two percent of
22 the entrance fee; and

23 (2) is clearly designated as nonrefundable in the
24 continuing care contract or reservation agreement.

25 SECTION 16. Section 246.077(b), Health and Safety Code, is
26 amended to read as follows:

27 (b) At the option of the facility, the loan reserve fund

1 escrow amount may exclude the portion of principal and interest
2 payments applicable to that portion of the facility that is a
3 licensed nursing facility or licensed assisted living facility
4 ~~[home]~~.

5 SECTION 17. Sections 246.114(b) and (d), Health and Safety
6 Code, are amended to read as follows:

7 (b) A facility subject to this section ~~[that initially filed~~
8 ~~with the commissioner an actuarial review performed on or after~~
9 ~~September 1, 1982, and before September 1, 1987,]~~ shall file with
10 the commissioner ~~[subsequent]~~ actuarial reviews at least once every
11 five years ~~[five-year intervals from the date of completion of the~~
12 ~~initial actuarial review]~~.

13 (d) The commissioner may require an actuarial review of a
14 facility more often than once every five years ~~[before the end of~~
15 ~~the five-year interval in which the facility would otherwise be~~
16 ~~required to file an actuarial review]~~ if:

17 (1) the facility leases from a third party any portion
18 of the grounds on which the facility is located or buildings in
19 which the facility operates; or

20 (2) [7] in the opinion of the commissioner, the
21 facility exhibits conditions of financial instability warranting
22 an earlier review.

23 SECTION 18. Section 246.114(c), Health and Safety Code, is
24 repealed.

25 SECTION 19. Section 246.0025, Health and Safety Code, as
26 amended by this Act, applies only to a provider that is issued a
27 certificate of authority under Subchapter B, Chapter 246, Health

1 and Safety Code, on or after January 1, 2026. A provider that is
2 issued a certificate of authority before that date is governed by
3 the law in effect immediately before January 1, 2026, and the former
4 law is continued in effect for that purpose.

5 SECTION 20. This Act takes effect January 1, 2026.