

By: Perry
(Rose)

S.B. No. 1522

Substitute the following for S.B. No. 1522:

By: Hull

C.S.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), (6), 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.

(6) "Facility" means an establishment that provides continuing care to an individual. The term includes [~~does not include~~] an individual's residence [~~if the residence is not a living unit provided by a provider~~].

(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 is in a nursing facility or assisted living facility.

(8-a) "Nursing facility" has the meaning assigned by Section [242.301](#).

SECTION 2. Section [246.0025](#), Health and Safety Code, is amended to read as follows:

Sec. 246.0025. DEFINITION OF CONTINUING CARE. (a) In this chapter, "continuing 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 Chapter [573](#), Government Code, to the person providing the care:

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

(2) an agreement to provide priority, guaranteed, or discounted access to progressive levels of health care services to an individual as necessary~~[, together with personal care services, nursing services, medical services, or other health-related services]~~, regardless of whether the services are provided at the same facility in which ~~[and]~~ 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:

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

(B) by a home and community support services

1 agency, as defined by Section 142.001 ~~[are provided at the same~~
2 ~~location:~~

3 ~~[(1) to an individual who is not related by~~
4 ~~consanguinity or affinity, as determined under Chapter 573,~~
5 ~~Government Code, to the person furnishing the care, and~~

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

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

14 SECTION 3. Section 246.004, Health and Safety Code, is
15 amended to read as follows:

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

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

24 (c) A facility shall provide to a resident, prospective
25 resident, or designated agent of a resident or prospective
26 resident, on request, an electronic or hard copy of the most recent
27 revised disclosure statement filed by the provider under Section

1 246.054.

2 SECTION 4. Subchapter B, Chapter 246, Health and Safety
3 Code, is amended by adding Section 246.0215 to read as follows:

4 Sec. 246.0215. APPLICABILITY. This chapter does not apply
5 to an admission or residence agreement offered by a residential
6 community that charges an entrance fee if:

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

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

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

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

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

27 (c) Except as provided by Subsection (c-1), the [The]

1 commissioner shall grant an application for a certificate of
2 authority if the commissioner finds that:

3 (1) the applicant or the facility is financially
4 sound;

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

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

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

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

16 Sec. 246.055. ADVERTISEMENT IN CONFLICT WITH DISCLOSURES.

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

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

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

27 (c) If a continuing care contract is rescinded under this

1 section, the entrance fee [~~any money or property transferred to the~~
2 ~~provider, other than periodic charges specified in the contract and~~
3 ~~applicable only to the period a living unit was actually occupied by~~
4 ~~the resident,~~] shall be refunded not later than the 30th day after
5 the date of rescission.

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

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

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

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

24 (1) any nonstandard costs specifically incurred by the
25 provider or facility at the request of the resident that are
26 described in the contract or in an addendum to the contract signed
27 by the resident; [~~and~~]

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

(3) 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.

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

(a) If a ~~[Before a]~~ provider accepts ~~[may accept]~~ 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 this state.

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

Sec. 246.072. RETURN OF DEPOSITS; RELEASE OR RETURN OF ENTRANCE FEE. (a) On a written request from or on behalf of the provider or a prospective resident, the escrow agent shall 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 ~~[or shall maintain the deposit as an entrance fee in the entrance fee escrow account]~~.

(b) Unless the escrow agent receives a written request from or on behalf of a provider or a resident for the return of an entrance fee under Subsection (a) ~~[Section 246.056]~~, the agent

1 shall, at the provider's discretion, release the fee to the
2 provider or place the fee in a loan reserve fund escrow.

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

5 Sec. 246.073. RELEASE TO ~~[THE]~~ PROVIDER FOR NEW FACILITY OR
6 EXPANSION.

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

10 (a) This section applies only to:

11 (1) a newly constructed facility; or

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

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

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

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

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

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

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;

(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~~ and ~~if~~

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

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

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

1 (C) [~~(iii)~~] a recognized surety authorized to do
2 business in this state has executed in favor of the provider a bond
3 covering faithful performance of the construction contract by the
4 general contractor and the payment of all obligations under the
5 contract;

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

12 (E) [~~(v)~~] the lender has disbursed not less than
13 10 percent of the amount of the construction loan for physical
14 construction or completed site preparation work;

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

21 (G) [~~or~~
22 [~~(B)~~ ~~if construction or purchase of the facility~~
23 ~~has been substantially completed.~~

24 [~~(i)~~] an occupancy permit covering the
25 living unit has been issued by the local government that has
26 authority to issue the permit; and

27 (H) [~~(ii)~~ ~~if the entrance fee applies to a living~~

1 ~~unit that has been previously occupied,~~ the living unit is
2 available for occupancy by the new resident.

3 SECTION 13. Section 246.0736, Health and Safety Code, is
4 amended by amending Subsection (a) and adding Subsection (d) to
5 read as follows:

6 (a) After the initial release of an entrance fee by an
7 escrow agent for a specific facility subject to Section 246.073,
8 and before construction of the facility is completed, the
9 commissioner shall authorize an escrow agent to continue to release
10 escrowed entrance fees for that facility to the provider without
11 further proof of satisfying the requirements of Section 246.073 if:

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

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

18 (d) After construction on a facility described by Section
19 246.073(a) is completed, all necessary occupancy permits for the
20 facility have been issued by the local government that has
21 authority to issue permits, and all living units in the facility are
22 available for occupancy, the release of escrowed entrance fees for
23 the facility is governed by Section 246.072.

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

26 Sec. 246.074. RETURN OF ENTRANCE FEE. The escrow agent
27 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]~~

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

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

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

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

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

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

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

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

(2) is clearly designated as nonrefundable in the

continuing care contract or reservation agreement.

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

(b) At the option of the facility, the loan reserve fund escrow amount may exclude the portion of principal and interest payments applicable to that portion of the facility that is a licensed nursing facility or licensed assisted living facility ~~[home]~~.

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

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

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

(1) 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; or

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

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

1 repealed.

2 SECTION 19. Section 246.0025, Health and Safety Code, as
3 amended by this Act, applies only to a provider that is issued a
4 certificate of authority under Subchapter B, Chapter 246, Health
5 and Safety Code, on or after January 1, 2026. A provider that is
6 issued a certificate of authority before that date is governed by
7 the law in effect immediately before January 1, 2026, and the former
8 law is continued in effect for that purpose.

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