

By: Galindo, Sheets, et al.

H.B. No. 2697

A BILL TO BE ENTITLED

AN ACT

relating to services provided by continuing care facilities.

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

SECTION 1. Section 246.002(3), Health and Safety Code, is redesignated as Section 246.0025, Health and Safety Code, and amended to read as follows:

Sec. 246.0025. DEFINITION OF CONTINUING CARE. (a) In this chapter, "continuing [~~(3)~~ ~~"Continuing~~]" care" means 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:

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

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

(b) The term "continuing care" includes the furnishing of services described by Subsection (a) to an individual in the individual's residence or otherwise enabling the individual to remain in the individual's residence.

SECTION 2. Sections 246.002(5), (6), (10), and (12), Health and Safety Code, are amended to read as follows:

(5) "Entrance fee" means an initial or deferred transfer of money or other property valued at an amount exceeding

1 three months' payments for rent or services, made, or promised to be
2 made, as full or partial consideration for acceptance by a provider
3 of a specified individual entitled to receive continuing care under
4 a continuing care contract ~~[as a resident]~~. The term does not
5 include a deposit made under a reservation agreement.

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

10 (10) "Provider" means a person who undertakes to
11 provide continuing care under a continuing care contract to a
12 resident ~~[in a facility]~~.

13 (12) "Resident" means an individual entitled to
14 receive continuing care under this chapter ~~[in a facility]~~.

15 SECTION 3. Section [246.041](#)(a), Health and Safety Code, is
16 amended to read as follows:

17 (a) A provider shall file with the board a current
18 disclosure statement that meets the requirements of this subchapter
19 and shall file copies of the agreements establishing the escrows
20 under Subchapter D or a verified statement explaining that an
21 escrow is not required before the provider:

22 (1) contracts to provide continuing care to a resident
23 ~~[in a facility located or to be located]~~ in this state;

24 (2) extends the term of an existing continuing care
25 contract with a resident ~~[in a facility that is located or to be~~
26 ~~located]~~ in this state ~~[and]~~ that requires or allows an entrance fee
27 from any person, regardless of whether the extended contract

1 requires an entrance fee; or

2 (3) including a person acting on the provider's
3 behalf, solicits for an individual who is a resident of this state a
4 continuing care contract in this state.

5 SECTION 4. Section 246.048, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 246.048. CONTENTS OF DISCLOSURE STATEMENT: CONTRACTS
8 AND FEES. The disclosure statement must describe:

9 (1) the services provided [~~at the facility~~] under a
10 continuing care contract, including:

11 (A) the extent to which medical care is
12 furnished; and

13 (B) those services that are included for
14 specified basic fees for continuing care and those services that
15 are made available at extra charge;

16 (2) all fees required of residents, including the
17 entrance fee and any periodic charges;

18 (3) the conditions under which a continuing care
19 contract [~~at the facility~~] may be canceled by the provider or the
20 resident;

21 (4) any conditions under which all or part of the
22 entrance fee is refundable on cancellation of the contract by the
23 provider or the resident, or by the death of the resident before or
24 during the occupancy of a living unit or otherwise before or during
25 the term of the contract; and

26 (5) the manner by which the provider may adjust
27 periodic charges or other recurring fees and any limitations on

those adjustments.

SECTION 5. Section 246.049, Health and Safety Code, is amended to read as follows:

Sec. 246.049. CONTENTS OF DISCLOSURE STATEMENT: CHANGE OF CIRCUMSTANCES. The disclosure statement for a continuing care contract to provide continuing care in a living unit of a facility must state:

(1) the policy of the facility regarding changes in the number of people residing in a living unit because of marriage or other relationships;

(2) the policy of the facility relating to the admission of a spouse to the facility and the consequences if the spouse does not meet the requirements for admission;

(3) the conditions under which a living unit occupied by a resident may be made available by the facility to a different resident other than on the death of the previous resident; and

(4) the health and financial conditions required for acceptance as a resident and for continuation as a resident, including the effect of any change in the health or financial condition of an individual between the date of the continuing care contract and the date on which the individual initially occupies a living unit.

SECTION 6. Section 246.050(a), Health and Safety Code, is amended to read as follows:

(a) The disclosure statement must:

(1) describe any provisions made or to be made to provide reserve funding or security to enable the provider to fully

perform its obligations under a continuing care contract [~~at a facility~~], including:

(A) the establishment of escrow accounts, trusts, or reserve funds and the manner in which those funds will be invested; and

(B) the name and experience of any individual in the direct employment of the provider who will make the investment decisions; and

(2) provide financial statements of the provider, including:

(A) a balance sheet as of the end of the most recent fiscal year; and

(B) income statements and a statement of cash flow for each of the three most recent fiscal years that the provider has been in existence.

SECTION 7. Section 246.056(b), Health and Safety Code, is amended to read as follows:

(b) A resident who executes a continuing care contract to provide continuing care in a living unit of a facility may not be required to move into the facility before the expiration of the period during which the contract may be rescinded.

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

(a) A continuing care contract to provide continuing care in a living unit in a facility is canceled if the resident:

(1) dies before occupying a living unit in the facility; or

1 (2) is precluded under the terms of the contract from
2 occupying a living unit in the facility because of illness, injury,
3 or incapacity.

4 SECTION 9. Subchapter D, Chapter 246, Health and Safety
5 Code, is amended by adding Section 246.0737 to read as follows:

6 Sec. 246.0737. CARE IN RESIDENCE. The commissioner by rule
7 shall establish requirements for escrow release different from
8 those under Section 246.073 for money received as an entrance fee in
9 connection with a continuing care contract in circumstances in
10 which a living unit is not furnished to the resident.

11 SECTION 10. Section 246.111(a), Health and Safety Code, is
12 amended to read as follows:

13 (a) To secure the obligations of the provider under any
14 continuing care contract, a lien attaches on the date a resident
15 first occupies a facility or receives services under a continuing
16 care contract. The lien covers the real and personal property of the
17 provider located at the facility. The provider shall prepare a
18 written notice sworn to by an officer of the provider for each
19 county where the provider has a facility. The notice must contain
20 the name of the provider, the legal description of each facility of
21 the provider, and a statement that the facility is subject to this
22 chapter and the lien provided by this section. The provider shall
23 file for record the notice in the real property records of each
24 county where the provider has a facility on or before the later of
25 January 1, 1994, or the date of the execution of the first
26 continuing care contract relating to the facility.

27 SECTION 11. Not later than December 1, 2015, the

1 commissioner of insurance shall adopt rules necessary to implement
2 the changes in law made by this Act.

3 SECTION 12. This Act takes effect immediately if it
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary for immediate
7 effect, this Act takes effect September 1, 2015.