Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 886 (Substitute S-2 as reported) *(Senate-passed version)*
Senate Bill 887 (Substitute S-3 as reported)
Senate Bill 888 (Substitute S-3 as reported)
Senate Bill 889 (Substitute S-2 as reported)
Sponsor: Senator John Moolenaar (S.B. 886)
Senator Tonya Schuitmaker (S.B. 887)
Senator David Hildenbrand (S.B. 888)
Senator Mike Nofs (S.B. 889)
Committee: Appropriations

CONTENT

Senate Bill 886 (S-2) would enact the "Continuing Care Community Disclosure Act" to provide for the regulation of continuing care communities, which would be retirement communities with a variety of possible levels of services. These could include a retirement community, a home for the aged, independent living, a nursing home, a home care agency, and a hospice.

Each of the services and facilities that could be part of a continuing care community is defined elsewhere in State statute and subject to various laws and regulations. The bill would create an umbrella organization, the continuing care community, that would be responsible for the facilities and services. The continuing care community could be either a for-profit or a nonprofit entity and its purposes would be limited to ownership, organization, and operation of the facilities and services rendered.

The bill also would govern the offer and sale of continuing care agreements with potential residents. The bill would set a limit on the amortization of the entrance fee to 1.5% for each month of occupancy. A continuing care community would have to have an office and an agent in the State and would have to elect or appoint a member to serve in an advisory capacity to its governing body.

The bill would exempt a continuing care community from promulgated rules governing individual types of facilities if those rules would interfere with the ongoing delivery of care or the movement of a member between facilities in different licensure categories. A continuing care community could request variances from rules established by the Department of Human Services if such rules unnecessarily segregate members residing in adult foster care or homes for the aged from other residents.

The bill also would require a continuing care community to register with the Department of Licensing and Regulatory Affairs (LARA), and pay a $250 fee for initial registration and a $100 fee for renewal.

The applying organization would have to state whether any executive officer or director had been convicted of a felony involving fraud, embezzlement, or misappropriation of property or had been subject to an injunction regarding licensure of any living facility. The applicant also would have to include a feasibility study for the continuing care community that would include a business plan if members were to receive continuing care at home.

The Department would have to accept the application as being complete within 60 days unless LARA specified the information necessary to complete the application. Then, LARA would have to decide within 180 days whether to register the community or deny the registration.

Application for renewal of registration would have to be submitted within 120 days after the end of each fiscal year. A feasibility study would have to be submitted with the application if there were plans to increase the number of living units by at least 25% or if the applicant were proposing new or additional long-term debt to finance construction. If a registrant had been registered for at least five years and had no financial problems or violations, registration could be extended for up to three fiscal years. Amendments to the registration would have to be acted upon by LARA within 30 days of the determination that the registration was administratively complete.

The bill would create the "Continuing Care Administration Fund" in the Department of Treasury. Fees paid for registration and renewal would be deposited in the Fund and could be used only for administration and enforcement of the proposed Act.

The bill would require a continuing care community to deliver to prospective members all agreements and disclosure statements upon receipt of a nonrefundable application fee or the payment of at least 10% of the total entrance fee to reserve a unit. The fee would be held in a trust account until occupancy, with the potential for funds to be held in escrow if the continuing care community were facing financial problems.

The bill would set regulations on fees to be charged to potential residents and regulations on fees charged and refunds made when a member moved out or passed away or chose, within seven days of making a deposit, to cancel the purchase. Such regulations would have to be included in the disclosure statement.

A continuing care agreement would have to specify rights and obligations related to the disclosure statement, specify whether an agreement could be terminated due to a material breach and define a material breach, and require the continuing care community to either give 30 days' notice before terminating a member or provide access to an adequate alternative facility.

In general, the bill includes standard protections of funds, deposits, and escrows found in regulation of similar entities. Financial statements would have to meet typical requirements for completeness and information on adverse material changes in financial condition, would have to be audited by an independent certified public accountant, and would require a three-year financial forecast.

Continuing care communities would have to retain for at least six years records on sales, compensation, and payments. They also would have to submit information to LARA quarterly on sales, occupancy, and service fees. Advertising and marketing communication would have to be submitted to and approved by LARA. Sales agents also would face limitations and could not have been involved in fraudulent activities.

A continuing care community could petition for a guardian if a resident became incapacitated and unable to handle his or her personal or financial affairs. Disputes would have to be resolved through arbitration. The Department could conduct investigations to determine if an offering created an unreasonable risk to residents. Those in violation would be subject to the payment of damages, repayment of fees charged, and the payment of attorney and court fees. A court or LARA could authorize a registrant to suspend payment of an entrance fee or revoke a registration if it would jeopardize the care of residents. Violations of the proposed Act, or a rule promulgated or order issued under the Act could lead to a civil fine of between $1,000 and $50,000. Violations committed knowingly would

be felonies, punishable by up to seven years in prison, or a fine of up to $10,000, and proceeds would be subject to forfeiture.

Applications to LARA and other documents would be subject to the Freedom of Information Act.

The bill would repeal the Living Care Disclosure Act as it substantially would replace that legislation.

Senate Bill 887 (S-3) would amend the Public Health Code and Senate Bill 888 (S-3) would amend the Adult Foster Care Facility Licensing Act to specify that rules promulgated for health facilities and adult foster care facilities would be subject to the rules exemption in Senate Bill 886 (S-2). (This is designed to permit unencumbered movement of members between areas of the community that are subject to different licensure categories.)

The bills are tie-barred to each other and to Senate Bill 886.

Senate Bill 889 (S-2) would amend the sentencing guidelines in the Code of Criminal Procedure to replace references to felony violations associated with the Living Care Disclosure Act with references to violations of the Community Care Community Disclosure Act. Additionally, the bill would remove the felony guidelines for violations of a repealed section of the Land Sales Act. There have been no felony dispositions under either of these code sections since 1998. The bill is tie-barred to Senate Bill 886.

MCL 333.20171 (S.B. 887)
MCL 400.710 (S.B. 888)
MCL 777.15b (S.B. 889)

FISCAL IMPACT

Senate Bills 886 (S-2), 887 (S-3), and 888 (S-3) would result in a minor but unspecified direct fiscal impact. The underlying purpose is to reflect the evolution of aging services from stand-alone facilities on different sites to include a continuum of possible services on one site. At present, the advocates for the legislation indicate that there are 26 continuing care retirement communities in the State, so revenue from applications would exceed $6,000, with that money used to support the administrative costs to LARA for the legislation. The Department already handles licensure of the entities within a continuing care retirement community, so the bills' requirements would create a separate process for registration.

The felony provision in Senate Bill 886 (S-2) and the sentencing guidelines in Senate Bill 889 (S-2) could result in costs, but, as noted, there have been no felony dispositions for these sorts of violations since 1998. If there were any additional felony sentences for convictions under the bills, in the short term, the marginal cost to State government would be approximately $4,100 per additional prisoner per year. Over the long term, the marginal cost to State government would be approximately $31,100 per additional prisoner per year.

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