

# House Bill 2491

Sponsored by Representative MACPHERSON, Senator JOHNSON; Representatives BRUUN, GILLIAM (at the request of former United States Senator Mark O. Hatfield, Antoinette Hatfield, Richard and Susannah Goff, Carl and Barbara Swett, John C. and Betty Caldwell, Warren and Margaret Oliver, Joann Scheele, Stanley and Mildred Bennett, Edward K. and Kathleen F. Allison, Ann Kendrick, Donna Brinati)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires that periodic charges under residency agreement in continuing care retirement community be fair, just and reasonable and based on specified expenses. Requires notice to residents of proposed increase in charges and procedure for residents to respond to proposed increase in charges.

Requires provider to engage residents in annual budget process. Requires Department of Human Services to evaluate annual budget processes.

Requires provider to make financial statements available to residents semiannually. Specifies information that must be included in financial statement.

Requires provider to permit resident representative to fully participate in meetings and committees of provider's governing board, with exceptions.

Imposes requirements for annual disclosure statement.

## A BILL FOR AN ACT

1  
2 Relating to continuing care retirement communities; creating new provisions; and amending ORS  
3 101.020, 101.055 and 101.130.

4 Whereas the residents of continuing care retirement communities have unique and valuable  
5 perspectives on the operation of and the services provided to the community in which they live; and

6 Whereas the opportunity for residents to provide meaningful input into provider decisions is an  
7 important factor in creating an environment of cooperation, minimizing disputes and ensuring timely  
8 response to and resolution of issues that arise; and

9 Whereas continuing care retirement communities are strengthened when residents know that  
10 their views are heard and respected by the provider; now, therefore,

11 **Be It Enacted by the People of the State of Oregon:**

12 **SECTION 1. Sections 2 to 7 of this 2007 Act are added to and made a part of ORS chapter**  
13 **101.**

14 **SECTION 2. (1) Periodic charges imposed by a provider under a residency agreement**  
15 **shall be:**

16 (a) Fair, just and reasonable; and

17 (b) Calculated based upon budgeted expenses set forth in the annual budget for the con-  
18 tinuing care retirement community.

19 (2) As used in this section, "budgeted expenses" means anticipated expenditures or li-  
20 ability for:

21 (a) Operating expenses.

22 (b) Interest payments and a debt service liquid reserve.

23 (c) Charges imposed by law or by a loan agreement that are required to be added to a  
24 sinking fund for payment of outstanding debt.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (d) Reasonably prudent charges to a sinking fund for:

2 (A) Anticipated capital expenditures;

3 (B) Anticipated refunds; and

4 (C) Contingencies.

5 (3) As used in this section, "budgeted expenses" does not mean depreciation expense.

6 **SECTION 3.** A disclosure statement under ORS 101.050 or 101.130 may not include an  
7 untrue statement of a material fact or omit information necessary for a complete under-  
8 standing of the statement.

9 **SECTION 4.** A provider that is required by law to file Internal Revenue Service form 990,  
10 Oregon Charitable Activities form CT-12, or a successor to either form, within three days  
11 shall post a notice in a conspicuous location in each continuing care retirement community  
12 that states the date the form was filed and that copies must be made available to each res-  
13 ident promptly upon request.

14 **SECTION 5.** (1) A provider shall engage in an annual budget planning process.

15 (2) A provider shall consult with the residents' council for the community or, if one does  
16 not exist, with a committee of community residents, during each annual budget planning  
17 process.

18 (3) The Department of Human Services shall evaluate the annual budget planning process  
19 of each provider at least every two years. The department's evaluation, including any policies  
20 adopted by the department relating to cooperation with residents, shall be made available to  
21 the residents' council or, if one does not exist, to a committee of community residents at  
22 least 14 days prior to the next semiannual meeting described in ORS 101.055. A copy of the  
23 evaluation shall be posted in a conspicuous location in the community.

24 **SECTION 6.** (1) A provider shall make available to the residents' council or if one does  
25 not exist, to a committee of community residents, not less frequently than twice a year, a  
26 financial statement of the continuing care retirement community that compares actual costs  
27 to budgeted costs, broken down by expense category.

28 (2) A provider shall maintain, as public information available upon request to residents,  
29 prospective residents and the public, minutes of the meetings of the provider's governing  
30 body, exclusive of matters in the minutes that, in the reasonable discretion of the provider,  
31 relate to litigation, personnel or competitive advantage, and shall retain these records for  
32 at least three years from the date the records were created.

33 (3) The governing body of a provider that operates only one community in the state shall  
34 accept at least one resident of the community to participate as a nonvoting resident repre-  
35 sentative on the governing body and on committees of the governing body.

36 (4) The governing body of a provider that operates more than one community in the state  
37 shall accept at least one resident of each community to participate as nonvoting resident  
38 representatives on the governing body and on committees of the governing body.

39 (5) The resident representatives and their alternates shall be selected by a majority vote  
40 of the residents' council of each community or, if one does not exist, by a majority vote of  
41 the residents of each community. Upon election, each resident representative shall promptly  
42 send to the provider the representative's name, address, electronic mail address and tele-  
43 phone number. Each community may determine the term of the representative and proce-  
44 dures for election and replacement of a representative and an alternate.

45 (6) A provider shall give to each resident representative and alternate the same notice

1 of governing body and committee meetings, governing body and committee packets, minutes  
 2 and other materials as the regular members of the governing body and committees receive,  
 3 and the representatives and alternates shall have the right to attend and participate in all  
 4 such meetings. At the reasonable discretion of the provider, information related to litigation,  
 5 personnel or competitive advantage may be withheld.

6 (7) Resident representatives and alternates shall have the right to share information  
 7 from governing body and committee meetings with other residents, unless the represen-  
 8 tatives or alternates are informed in writing by the chair of the governing body or committee  
 9 that the information is confidential because it relates to litigation, personnel or competitive  
 10 advantage. Matters that involve annual budgets, increases in periodic charges, provider  
 11 indebtedness or expansion of new or existing facilities are not considered to be confidential.

12 (8) Notwithstanding subsections (3) to (6) of this section, the governing body of a provider  
 13 may exclude resident representatives and alternates from its executive sessions and from  
 14 receiving governing body materials to be discussed during executive sessions, except for  
 15 those sessions in which they discuss, review or vote on annual budgets, increases in periodic  
 16 charges, provider indebtedness or expansion of new or existing facilities.

17 (9) The provider shall pay all reasonable travel costs for resident representatives and  
 18 alternates to attend meetings of the governing body and committees.

19 **SECTION 7.** Nothing in this chapter is intended to prohibit a provider from exceeding the  
 20 minimum resident participation requirements set forth in this chapter, including but not  
 21 limited to the requirement to:

22 (1) Meet with residents on a semiannual basis; or

23 (2) Permit residents of a continuing care retirement community to select one represen-  
 24 tative to the provider's governing body.

25 **SECTION 8.** ORS 101.020 is amended to read:

26 101.020. As used in this chapter:

27 (1) "Application fee" means a fee charged to an individual or individuals, prior to execution of  
 28 a residency agreement, apart from an entrance fee.

29 (2) "Audited financial statement" means a provider's financial statement that has been prepared  
 30 in accordance with generally accepted accounting principles and that has been audited by an inde-  
 31 pendent certified public accountant in accordance with generally accepted auditing standards and  
 32 includes notes to the financial statement that state whether or not the community is in compliance  
 33 with its reserve requirements.

34 (3) "Closed system long term care facility" means a long term care facility in a continuing care  
 35 retirement community that is used exclusively by the continuing care retirement community's resi-  
 36 dents.

37 (4) "Continuing care" means directly furnishing or indirectly making available, upon payment  
 38 of an entrance fee and under a residency agreement, housing and health related services, including  
 39 nursing or assistance with activities of daily living, for a period greater than one year to an indi-  
 40 vidual not related by blood or marriage to the continuing care retirement community provider that  
 41 is furnishing care, whether provided in the community or in another setting designated by the resi-  
 42 dency agreement.

43 (5) "Continuing care retirement community" or "community" means any provider that agrees to  
 44 furnish continuing care to a resident under a residency agreement.

45 (6) "Department" means the Department of Human Services.

1 (7) "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other  
 2 property made or promised to be made as full or partial consideration for acceptance of one or more  
 3 residents in a community. A fee that is less than the sum of the regular periodic charges for one  
 4 year of residency is not an entrance fee.

5 (8) "Living unit" means a room, apartment, cottage or other area set aside for the exclusive use  
 6 of the resident.

7 (9) "Manager" means a person, corporation, partnership, association or other legal entity that  
 8 enters into a contractual arrangement with the provider to manage the continuing care retirement  
 9 community. However, "manager" does not include individuals employed by the provider or corpo-  
 10 rations affiliated with the provider or other legal entities within the provider's supervision or con-  
 11 trol.

12 (10) "New continuing care retirement community" or "new community" means a community es-  
 13 tablished by a provider on or after January 1, 1990. "New community" does not mean the remodeling  
 14 or expansion of an existing continuing care retirement community's facility on the same or an ad-  
 15 jacent site.

16 (11) "Omit a material fact" means the failure to state a material fact required to be stated in  
 17 any disclosure statement or registration.

18 (12) "Provider" means an owner or operator, whether a natural person, partnership, trust, lim-  
 19 ited liability company, corporation or unincorporated association, however organized, of a new or  
 20 existing continuing care retirement community, whether operated for profit or not, that provides,  
 21 plans to provide or agrees to provide continuing care for an entrance fee.

22 (13) "Residency agreement" means the contract or contracts between a provider and a resident  
 23 for the provision of continuing care.

24 (14) "Resident" means a person who enters into a residency agreement with a provider or who  
 25 is designated in a residency agreement to be a person being provided with continuing care in a  
 26 community.

27 **(15) "Residents' council" means a body of residents elected by the residents to represent**  
 28 **their interests.**

29 [(15)] (16) "Solicit" means all actions of a provider in seeking to have individuals pay an appli-  
 30 cation fee or enter into a residency agreement by any means including, without limitation, personal,  
 31 telephone, mail or any media distributed or communicated by any means.

32 **SECTION 9.** ORS 101.055 is amended to read:

33 101.055. (1) The governing body or a designated representative of the provider shall hold  
 34 meetings with the residents of the continuing care retirement community at least twice a year for  
 35 the purpose of free discussion of subjects that may include, but are not limited to, facility income,  
 36 expenditures, financial trends, resident concerns and proposed changes in policy, programs and ser-  
 37 vices. The meetings shall be open to a designated personal representative of a resident. **The pro-**  
 38 **vider must allow a reasonable opportunity for residents attending the meeting to present**  
 39 **issues for discussion, either orally or in writing.** The provider shall report the dates of the  
 40 meetings in the annual disclosure statement to the Department of Human Services.

41 (2) The provider shall give residents **advance** notice of proposed changes in fees, **periodic**  
 42 **charges** or services [*and allow residents a reasonable opportunity to comment on the proposed*  
 43 *changes before they become effective*]. **At least 30 days before an increase in a periodic charge**  
 44 **takes effect, the provider shall hold a meeting with residents of the community to present**  
 45 **the reasons for the proposed increase and the data supporting the need for the increase. A**

1 meeting described in subsection (1) of this section may be used for this purpose. At least 14  
2 days prior to a meeting under this subsection, the provider shall post in a conspicuous lo-  
3 cation and make available to each resident an agenda for the meeting and detailed budgets  
4 for the current and following year that show:

5 (a) Actual and projected expenses for the current fiscal year;

6 (b) Projected expenses for the following fiscal year;

7 (c) The formula or method for calculating the proposed increase in charges; and

8 (d) The current charge for each living unit in the community and the proposed increase  
9 to each charge.

10 **SECTION 10.** ORS 101.130 is amended to read:

11 101.130. (1) *[The]* A provider shall file annually with the Department of Human Services **and**  
12 **provide to each resident** an annual disclosure statement for the end of the provider's fiscal year.  
13 The statement shall be filed within four months following the end of the provider's fiscal year unless  
14 the time is extended by the department.

15 (2) The annual disclosure statement shall consist of:

16 (a) An audited financial statement prepared in accordance with generally accepted accounting  
17 principles for the preceding fiscal year and shall disclose any change in ownership or manager[.];  
18 **and**

19 (b) **A full description of all contracts that the provider has entered into or anticipates**  
20 **entering into with affiliated organizations and an explanation of the financial impact that the**  
21 **contracts may have on residents.**

22 (3) **The disclosure statement shall note any changes from the provider's previous annual**  
23 **disclosure statement.**