HOUSE
RESEARCH
ORGANIZATION bill analysis

4/27/87

HB 677
Barton
(CSHB 677 by Cooper)

SUBJECT: Regulation of continuing-care retirement communities

COMMITTEE: Human Services: committee substitute recommended

VOTE: 5 ayes--Barton, Vowell, Blair, Earley, Grusendorf

0 nays

4 absent--Cooper, R. Cuellar, Larry, Waterfield

WITNESSES: For--R.W. Hagauer and Phillip Rickets, Texas Association of Homes for the Aging; Charles A. Shelton, Christian Care Centers Inc.; Lawrence L. Brown, retired; Wayne Doshier, Westminster Manor; Jim Nelson, State Board of Insurance; Alva Finck, Texas Department on Aging; Sid Rich, alternate-care facility operator

Against--None

On--David A. Talbot, Attorney General's Office; A.V. Ammann and William A. Cunningham, retired

BACKGROUND: Continuing-care retirement communities offer residents room and board plus various health-related services. They charge entrance fees plus monthly fees.

DIGEST: CSHB 677 would require continuing-care facilities to obtain certificates of authority from the State Board of Insurance, issue an annually updated disclosure statement and maintain two escrow accounts for entrance fees. The State Board of Insurance would have authority to investigate practices, revoke or suspend certificates of authority, appoint supervisors and seek court orders for rehabilitation or liquidation of financially troubled facilities. Application and filing fees would be charged to defray administrative costs.

Residents could sue for civil damages in connection with disclosure statements and would have a lien in case of liquidation, bankruptcy or insolvency. Willful and knowing violations of the act would be Class A misdemeanors, punishable by up to a year in jail and a $2,000 fine.

Chapter 104 of the Human Resources Code, requiring disclosure filings by retirement facilities, would be repealed.

SUPPORTERS SAY:

Regulation of the continuing-care industry is needed to protect the substantial investments of retired people who often use proceeds from the sale of a home or much of their life savings to pay entrance fees for retirement communities. The concept of continuing care or "life care" is gaining popularity because it offers both security and independence for the many people aged 55 and older who are healthy but want life-time housing and readily available care should their health decline.

Because of its climate and growing elderly population, Texas is expected to be a boom state for this industry. About 32 such facilities are currently operating in Texas, charging entrance fees ranging from $9,500 to $195,000 and monthly fees of $600 to $700.

At least four Texas facilities have defaulted on bonds and are in various stages of restructuring. If efforts to save a troubled facility fail, retirees lose their entire investments because they have no equity standing in bankruptcy proceedings. The escrow accounts required by CSHB 677 would prevent continuing-care facilities from spending all entrance fees, thereby lessening the likelihood of bankruptcy and protecting residents if it occurs.

Major fraud cases can and do occur because the millions of dollars in entrance fees that accrue in the early years of operation present an attractive target to an unscrupulous developer. In other cases, well-meaning providers have failed for lack of proper planning and actuarial analysis.

CSHB 677's extensive disclosure requirements would help prospective residents make informed judgments about varied continuing-care offerings. It would also prevent some serious misrepresentations, such as suggestions that a facility is church-affiliated when there is little or no connection with a church. Among the 28 required disclosures are statements regarding extent of a facility's affiliation and financial ties to religious, charitable or other non-profit organizations; policies for transfer of chronically ill residents; and consequences of a resident's marriage or change in financial circumstances.

This bill would protect consumers through regulation, with civil and criminal remedies, without burdening existing facilities or discouraging their expansion in Texas. Certificates of authority, unlike certificates of need, do not require proof that there is a need for additional service. These certificates merely would allow the insurance board to make sure a prospective facility was financially sound and capable of complying with law.

Chapter 104 of the Human Resources Code, which requires disclosure filings but does not require that the Department of Human Resources even examine them, affords consumers little or no protection. It has no enforcement provision, and 10 of 29 facilities surveyed recently said they had no idea that it applied to them.

Especially in these tight fiscal times, it is reasonable to fund enforcement through fees. The $10,000 initial application fee would not be onerous for a multimillion-dollar venture, and inability to pay would indicate deeper problems. Filing fees of $500 plus $2 per housing unit are tailored to facility size.

The State Board of Insurance is the proper enforcement agency because its employees have the expertise to spot an actuarial disaster. Regulation of any on-site health care would remain with the Health Department.

This bill reflects recommendations made by the interim report of the House Human Services Committee, which conducted a study of continuing-care facilities.

OPPONENTS SAY:

The three-year time limit on civil actions relating to disclosure statements should start when the event creating liability occurs, not when the contract is signed. As written, this bill would not protect a resident who has been wronged in connection with an faulty annual disclosure statement more than three years after contracting. Because residents are generally quite healthy, potential litigants might live at continuing-care facilities more than three years.

NOTES:

The committee substitute added to the original version of HB 677 the requirements of certificates of authority, fees, supervision as an alternative to court-ordered rehabilitation or liquidation, and a prohibition on advertising that conflicts with disclosure statements. It also would clarify that the

State Board of Insurance would have no responsibility regarding quality of care.

The Legislative Budget Office estimates that CSHB 677 would involve the collection and expenditure of $79,701 in fees the first year and $76,701 in subsequent years. An earlier fiscal note, subsequently revised, that was based on an additional 6.5 employees instead of two, estimated expenditures ranging from $312,628 the first year to $257,808 in the fifth year.