

Senate Bill No. 309

Passed the Senate August 20, 2002

Secretary of the Senate

Passed the Assembly August 15, 2002

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2002, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 1771.7, 1771.8, 1776.3, 1777, and 1793.9 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 309, Ortiz. Continuing care retirement communities.

Under existing law, the State Department of Social Services is responsible for regulating activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the residents' life or a term in excess of one year. Existing law contains provisions relating to supervision of life care contracts, also known as continuing care contracts, including requirements governing continuing care communities and contracts.

Existing law specifies rights of which no resident of a continuing care retirement community may be deprived.

This bill would also declare that residents of a continuing care community have the right to organize and participate freely in the operation of resident associations.

Existing law requires continuing care providers to permit the formation of a resident association by interested residents and to establish policies and procedures that promote the sharing of information, dialogue between residents and management, and access to the provider's governing body. Existing law requires that those policies and procedures shall be evaluated at a minimum of every 2 years.

This bill would, instead, require the provider to conduct a biannual resident satisfaction survey, that would be made available to the resident association or its governing body or to a committee of residents of continuing care communities at least 14 days prior to the next semiannual meeting of residents and the governing body of the provider. It would also require that a copy of the survey be posted in a conspicuous location at each facility.

Existing law requires that, at least 30 days prior to the implementation of any increase in the monthly care fee, the designated representative of a continuing care retirement community provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons



for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase.

This bill would require the provider to make certain data available at least 14 days prior to a meeting to discuss a monthly care fee increase, and would require that a copy of that information be posted in a conspicuous location at each facility. This bill would impose on a continuing care provider responsibilities to prepare and provide certain reports to residents, and to allow residents to make presentations at specified meetings.

Existing law provides that in a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three California-based continuing care retirement communities or fraction thereof that the provider operates.

This bill would provide that, if a multifacility organization elects to have one representative for every 3 communities that the provider operates, the provider shall provide to the president of the residents association of each of the communities that do not have a resident representative, the same notice of board meetings, board packets, minutes, and other materials as the resident representative. It would, however, permit specified information to be withheld. It would also permit, except as prescribed, resident representatives to share information from board meetings with other residents.

This bill would also require the department, by April 1, 2003, and with input from the committee, to make recommendations to the Legislature as to whether any changes in current law regarding resident representation to the board is needed, and to provide written guidelines, available to residents and providers, that address specified issues.

Existing law requires the Continuing Care Contracts Branch of the department to perform various duties in the oversight of continuing care retirement community facilities.



Existing law requires the branch to respond to continuing care facility residents' rights, service-related, and financially related complaints by residents.

This bill would require the branch to provide the continuing care contracts advisory committee with a summary of all residents' rights, service-related, and financially related complaints by residents. This bill would also require the provider to disclose any citation issued by the department in its disclosure statement to residents.

Existing law provides that the Continuing Care Advisory Committee of the department, comprised of specified membership, shall act in an advisory capacity to the department on matters relating to continuing care contracts.

This bill would revise the membership of the committee.

Existing law provides that in the event of liquidation, all claims made against a continuing care provider based on the provider's continuing care contracts shall be preferred claims against all assets owned by the provider.

This bill would include claims against a continuing provider in the event of receivership within the scope of that requirement.

The people of the State of California do enact as follows:

SECTION 1. Section 1771.7 of the Health and Safety Code is amended to read:

1771.7. (a) No resident of any continuing care retirement community shall be deprived of any civil or legal right, benefit, or privilege guaranteed by law, by the California Constitution, or by the United States Constitution solely by reason of status as a resident of a community. In addition, because of the discretely different character of residential living unit programs that are a part of continuing care retirement communities, this section shall augment Chapter 3.9 (commencing with Section 1599), Section 73523 of Title 22 of the California Code of Regulations, and applicable federal law and regulations.

(b) All residents in residential living units shall have all of the following rights:

(1) To live in an attractive, safe, and well maintained physical environment.



(2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.

(3) To participate in activities that meet individual physical, intellectual, social, and spiritual needs.

(4) To expect effective channels of communication between residents and staff, and between residents and the administration or provider's governing body.

(5) To receive a clear and complete written contract that establishes the mutual rights and obligations of the resident and the continuing care retirement community.

(6) To maintain and establish ties to the local community.

(7) To organize and participate freely in the operation of resident associations.

(c) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall do both of the following:

(1) Permit the formation of a resident association by interested residents who may elect a governing body. The provider shall provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to permit a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The association may, among other things, make recommendations to management regarding resident issues that impact the residents' quality of life. Meetings shall be open to all residents to attend as well as to present issues. Executive sessions of the governing body shall be attended only by the governing body.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management, and access to the provider's governing body. The provider shall biannually conduct a resident satisfaction survey that shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the governing board of the provider required by subdivision (c) of Section 1771.8. A copy of the survey shall be posted in a conspicuous location at each facility.

(d) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities for



the elderly or skilled nursing facilities, the provider shall provide a copy of the bill of rights prescribed by this section to each resident at or before the resident's admission to the community.

(e) The department may, upon receiving a complaint of a violation of this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations and consult with the Continuing Care Advisory Committee for determination of compliance.

(f) Failure to comply with this section shall be grounds for suspension, condition, or revocation of the provisional certificate of authority or certificate of authority pursuant to Section 1793.21.

SEC. 2. Section 1771.8 of the Health and Safety Code is amended to read:

1771.8. (a) The Legislature finds and declares all of the following:

(1) The residents of continuing care retirement communities have a unique and valuable perspective on the operations of and services provided in the community in which they live.

(2) Resident input into decisions made by the provider is an important factor in creating an environment of cooperation, reducing conflict, and ensuring timely response and resolution to issues that may arise.

(3) Continuing care retirement communities are strengthened when residents know that their views are heard and respected.

(b) The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, the following:

(1) Encouraging residents to form a resident association, and assisting the residents, the resident association, and its governing body to keep informed about the operation of the continuing care retirement community.

(2) Encouraging residents of a continuing care retirement community or their elected representatives to select residents to participate as board members of the governing body of the provider.

(3) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the continuing care retirement community.



(c) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or the resident association or its governing body, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the continuing care retirement community and proposed changes in policies, programs, and services. Nothing in this section precludes a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

(d) At least 30 days prior to the implementation of any increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase. This meeting may coincide with the semiannual meetings provided for in subdivision (c). At least 14 days prior to the meeting to discuss any increase in the monthly care fee, the provider shall make available to each resident or resident household comparative data showing the budget for the upcoming year, the current year's budget, and actual and projected expenses for the current year, and a copy shall be posted in a conspicuous location at each facility.

(e) The governing body of a provider or the designated representative of the provider shall provide residents with at least 14 days' advance notice of each meeting provided for in subdivisions (c) and (d), and shall permit residents attending the meeting to present issues orally and in writing. The governing body of a provider or the designated representative of the provider shall post the notice of, and the agenda for, the meeting in a conspicuous place in the continuing care retirement community at least 14 days prior to the meeting. The governing body of a provider or the designated representative of the provider shall make available to residents of the continuing care retirement community upon request the agenda and accompanying materials at least seven days prior to the meeting.

(f) Each provider shall make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that



facility comparing actual costs to budgeted costs broken down by expense category, not less than semiannually, and shall consult with the resident association or its governing body, or, if neither exists, with a committee of residents, during the annual budget planning process. The effectiveness of consultations during the annual budget planning process shall be evaluated at a minimum every two years by the continuing care retirement community administration. The evaluation, including any policies adopted relating to cooperation with residents, shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the provider's governing body provided for in subdivision (c), and a copy of the evaluation shall be posted in a conspicuous location at each facility.

(g) Each provider shall, within 10 days after the annual report required pursuant to Section 1790 is submitted to the department, provide, at a central and conspicuous location in the community, a copy of the annual report, including the multifacility statement of activities, and including a copy of the annual audited financial statement, but excluding personal confidential information.

(h) Each provider shall maintain, as public information, available upon request to residents, prospective residents, and the public, minutes of the board of director's meetings and shall retain these records for at least three years from the date the records were filed or issued.

(i) The governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state shall accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.

(j) In a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least



one nonvoting resident representative to the provider’s governing body for every three California-based continuing care retirement communities or fraction thereof that the provider operates. If a multifacility organization elects to have one representative for every three communities that the provider operates, the provider shall provide to the president of the residents association of each of the communities that do not have a resident representative, the same notice of board meetings, board packets, minutes, and other materials as the resident representative. At the reasonable discretion of the provider, information related to litigation, personnel, competitive advantage, or confidential information that is not appropriate to disclose, may be withheld.

(k) In order to encourage innovative and alternative models of resident involvement, a resident selected pursuant to subdivision (i) to participate as a resident representative to the provider’s governing body may, at the option of the resident association, be selected in any one of the following ways:

(1) By a majority vote of the resident association of a provider or by a majority vote of a resident-elected committee of residents of a multifacility organization.

(2) If no resident association exists, any resident may organize a meeting of the majority of the residents of the continuing care retirement community to select or nominate residents to represent them before the governing body.

(3) Any other method designated by the resident association.

(l) The resident association, or organizing resident, or in the case of a multifacility organization, the resident-elected committee of residents, shall give residents of the continuing care retirement community at least 30 days’ advance notice of the meeting to select a resident representative and shall post the notice in a conspicuous place at the continuing care retirement community.

(m) (1) Except as provided in subdivision (n), the resident representative shall receive the same notice of board meetings, board packets, minutes, and other materials as members and shall be permitted to attend, speak, and participate in all meetings of the board.

(2) Resident representatives may share information from board meetings with other residents, unless the information is confidential or doing so would violate fiduciary duties to the



provider. In addition, a resident representative shall be permitted to attend meetings of the board committee or committees that review the annual budget of the facility or facilities and recommend increases in monthly care fees. The resident shall receive the same notice of committee meetings, information packets, minutes, and other materials as committee members, and shall be permitted to attend, speak at, and participate in, committee meetings. Resident representatives shall perform their duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(n) Notwithstanding subdivision (m), the governing body may exclude resident representatives from its executive sessions and from receiving board materials to be discussed during executive session. However, resident representatives shall be included in executive sessions and shall receive all board materials to be discussed during executive sessions related to discussions of the annual budgets, increases in monthly care fees, indebtedness, and expansion of new and existing continuing care retirement communities.

(o) The provider shall pay all reasonable travel costs for the resident representative.

(p) The provider shall disclose in writing the extent of resident involvement with the board to prospective residents.

(q) Nothing in this section prohibits a provider from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings or more resident representatives to the board than required or by having one or more residents on the provider's governing body who are selected with the active involvement of residents.

(r) On or before April 1, 2003, the department, with input from the Continuing Care Advisory Committee of the department established pursuant to Section 1777, shall do all of the following:

(1) Make recommendations to the Legislature as to whether any changes in current law regarding resident representation to the board is needed.

(2) Provide written guidelines available to residents and providers that address issues related to board participation, including rights and responsibilities, and that provide guidance on the extent to which resident representatives who are not voting



members of the board have a duty of care, loyalty, and obedience to the provider and the extent to which providers can classify information as confidential and not subject to disclosure by resident representatives to other residents.

SEC. 3. Section 1776.3 of the Health and Safety Code is amended to read:

1776.3. (a) The Continuing Care Contracts Branch of the department shall enter and review each continuing care retirement community in the state at least once every three years to augment the branch's assessment of the provider's financial soundness.

(b) During its facility visits, the branch shall consider the condition of the facility, whether the facility is operating in compliance with applicable state law, and whether the provider is performing the services it has specified in its continuing care contracts.

(c) The branch shall issue guidelines that require each provider to adopt a comprehensive disaster preparedness plan, update that plan at least every three years, submit a copy to the department, and make copies available to residents in a prominent location in each continuing care retirement community facility.

(d) (1) The branch shall respond within 15 business days to residents' rights, service-related, and financially related complaints by residents, and shall furnish to residents upon request and within 15 business days any document or report filed with the department by a continuing care provider, except documents protected by privacy laws.

(2) The branch shall provide the Continuing Care Contracts Advisory Committee with a summary of all residents' rights, service-related, and financially related complaints by residents. The provider shall disclose any citation issued by the department pursuant to Section 1793.6 in its disclosure statement to residents as updated annually, and shall post a notice of the citation in a conspicuous location in the facility. The notice shall include a statement indicating that residents may obtain additional information regarding the citation from the provider and the department.

(e) The branch shall annually review, summarize, and report to the director on the work of the Continuing Care Contracts Advisory Committee, including any issues arising from its review of the condition of any continuing care retirement community or



any continuing care retirement community provider, and including any recommendations for actions by the committee, the department, or the Legislature to improve oversight of continuing care retirement community.

SEC. 4. Section 1777 of the Health and Safety Code is amended to read:

1777. (a) The Continuing Care Advisory Committee of the department shall act in an advisory capacity to the department on matters relating to continuing care contracts.

(b) The members of the committee shall include:

(1) Three representatives of nonprofit continuing care providers pursuant to this chapter, each of whom shall have offered continuing care services for at least five years prior to appointment. One member shall represent a multifacility provider and shall be appointed by the Governor in even years. One member shall be appointed by the Senate Committee on Rules in odd years. One member shall be appointed by the Speaker of the Assembly in odd years.

(2) Three senior citizens who are not eligible for appointment pursuant to paragraphs (1) and (4) who shall represent consumers of continuing care services, all of whom shall be residents of continuing care retirement communities but not residents of the same provider. One senior citizen member shall be appointed by the Governor in even years. One senior citizen member shall be appointed by the Senate Committee on Rules in odd years. One senior citizen member shall be appointed by the Speaker of the Assembly in odd years.

(3) A certified public accountant with experience in the continuing care industry, who is not a provider of continuing care services. This member shall be appointed by the Governor in even years.

(4) A representative of a for-profit provider of continuing care contracts pursuant to this chapter. This member shall be appointed by the Governor in even years.

(5) An actuary. This member shall be appointed by the Governor in even years.

(6) One representative of residents of continuing care retirement communities appointed by the senior citizen representatives on the committee.



(7) One representative of either nonprofit or for-profit providers appointed by the representatives of nonprofit and for-provider providers on the committee.

(c) Commencing January 1, 1997, all members shall serve two-year terms and be appointed based on their interest and expertise in the subject area. The Governor shall designate the chairperson for the committee with the advice and consent of the Senate. A member may be reappointed at the pleasure of the appointing power. The appointing power shall fill all vacancies on the committee within 60 days. All members shall continue to serve until their successors are appointed and qualified.

(d) The members of the committee shall serve without compensation, except that each member shall be paid from the Continuing Care Provider Fee Fund a per diem of twenty-five dollars (\$25) for each day's attendance at a meeting of the committee not to exceed six days in any month. The members of the committee shall also receive their actual and necessary travel expenses incurred in the course of their duties. Reimbursement of travel expenses shall be at rates not to exceed those applicable to comparable state employees under Department of Personnel Administration regulations.

(e) Prior to commencement of service, each member shall file with the department a statement of economic interest and a statement of conflict of interest pursuant to Article 3 (commencing with Section 87300) of the Government Code.

(f) If, during the period of appointment, any member no longer meets the qualifications of subdivision (b), that member shall submit his or her resignation to their appointing power and a qualified new member shall be appointed by the same power to fulfill the remainder of the term.

SEC. 5. Section 1793.9 of the Health and Safety Code is amended to read:

1793.9. (a) In the event of receivership or liquidation, all claims made against a provider based on the provider's continuing care contracts shall be preferred claims against all assets owned by the provider. However, these preferred claims shall be subject to any perfected claims secured by the provider's assets.

(b) If the provider is liquidated, residents who have executed a refundable continuing care contract shall have a preferred claim to liquid assets held in the refund reserve pursuant to Section



1792.6. This preferred claim shall be superior to all other claims from residents without refundable contracts or other creditors. If this fund and any other available assets are not sufficient to fulfill the refund obligations, each resident shall be distributed a proportionate amount of the refund reserve funds determined by dividing the amount of each resident's refund due by the total refunds due and multiplying that percentage by the total funds available.

(c) For purposes of computing the reserve required pursuant to Sections 1792.2 and 1793, the liens required under Section 1793.15 are not required to be deducted from the value of real or personal property.



Approved _____, 2002

Governor

