

Assembly Bill No. 1169

CHAPTER 513

An act to amend Section 1790 of the Health and Safety Code, relating to continuing care contracts.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1169, Ruskin. Elderly care: continuing care contracts: financial reporting requirements.

Existing law establishes the State Department of Social Services and sets forth its various powers and duties, including, but not limited to, its licensure and regulation of community care facilities, including, but not limited to, residential care facilities for the elderly. Existing law provides for the regulation by the department of continuing care contracts and providers of continuing care and requires providers to submit an annual report of their financial condition. Existing law requires the report to include, among other things, a disclosure of funds accumulated for identified projects or purposes, and any funds maintained or designated for specific contingencies. Violation of certain of these provisions is a crime.

This bill would require that the report also disclose funds that are expended for identified projects or purposes. The bill would also specify that the disclosure requirement includes, but is not limited to, projects designated to meet the needs of the continuing care retirement community as permitted by a provider's nonprofit status. This bill would require a disclosure made by a nonprofit provider to state how the project or purpose is consistent with the provider's tax-exempt status. The bill would also require a disclosure made by a for-profit provider to identify amounts accumulated for specific projects or purposes and amounts maintained for contingencies. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 1790 of the Health and Safety Code is amended to read:

1790. (a) Each provider that has obtained a provisional or final certificate of authority and each provider that possesses an inactive certificate of authority shall submit an annual report of its financial condition. The report shall consist of audited financial statements and required reserve calculations, with accompanying certified public accountants' opinions thereon, the reserve information required by paragraph (2), Continuing Care Provider Fee and Calculation Sheet, evidence of fidelity bond as required by Section 1789.8, and certification that the continuing care contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information:

(1) A certification, if applicable, that the entity is maintaining reserves for prepaid continuing care contracts, statutory reserves, and refund reserves.

(2) Full details on the status, description, and amount of all reserves that the provider currently designates and maintains, and on per capita costs of operation for each continuing care retirement community operated.

(3) Disclosure of any amounts accumulated or expended for identified projects or purposes, including, but not limited to, projects designated to meet the needs of the continuing care retirement community as permitted by a provider's nonprofit status under Section 501(c)(3) of the Internal Revenue Code, and amounts maintained for contingencies. The disclosure of a nonprofit provider shall state how the project or purpose is consistent with the provider's tax-exempt status. The disclosure of a for-profit provider shall identify amounts accumulated for specific projects or purposes and amounts maintained for contingencies. Nothing in this subdivision shall be construed to require the accumulation of funds or funding of contingencies, nor shall it be interpreted to alter existing law regarding the reserves that are required to be maintained.

(4) Full details on any increase in monthly care fees, the basis for determining the increase, and the data used to calculate the increase.

(5) The required reserve calculation schedules shall be accompanied by the auditor's opinion as to compliance with applicable statutes.

(6) Any other information as the department may require.

(b) Each provider shall file the annual report with the department within four months after the provider's fiscal yearend. If the complete annual report is not received by the due date, a one thousand dollar (\$1,000) late fee shall accompany submission of the reports. If the reports are more than 30 days past due, an additional fee of thirty-three dollars (\$33) for each day over the first 30 days shall accompany submission of the report. The department may, at its discretion, waive the late fee for good cause.

(c) The annual report and any amendments thereto shall be signed and certified by the chief executive officer of the provider, stating that, to the best of his or her knowledge and belief, the items are correct.

(d) A copy of the most recent annual audited financial statement shall be transmitted by the provider to each transferor requesting the statement.

(e) A provider shall amend its annual report on file with the department at any time, without the payment of any additional fee, if an amendment is

necessary to prevent the report from containing a material misstatement of fact or omitting a material fact.

(f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations. The request shall be made each year within 30 days after the provider's fiscal yearend. The request shall include the amount of the trust fund or performance bond determined by calculating the projected life costs, less the projected life revenue, for the remaining continuing care residents in the year the provider requests the waiver. If the department approves the request, the following shall be submitted to the department annually:

(1) Evidence of trust fund or performance bond and its amount.

(2) A list of continuing care residents. If the number of continuing care residents exceeds 10 at any time, the provider shall comply with the requirements of this section.

(3) A provider fee as required by subdivision (c) of Section 1791.

(g) If the department determines a provider's annual audited report needs further analysis and investigation, as a result of incomplete and inaccurate financial statements, significant financial deficiencies, development of work out plans to stabilize financial solvency, or for any other reason, the provider shall reimburse the department for reasonable actual costs incurred by the department or its representative. The reimbursed funds shall be deposited in the Continuing Care Contract Provider Fee Fund.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.