

**ASSEMBLY BILL**

**No. 748**

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**Introduced by Assembly Member Yamada**

February 17, 2011

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An act to amend Sections 1770 and 1771 of, and to add Section 1770.5 to, the Health and Safety Code, relating to continuing care retirement communities.

LEGISLATIVE COUNSEL'S DIGEST

AB 748, as introduced, Yamada. Continuing care retirement communities: contracts.

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 resident's life or a term in excess of one year.

This bill would transfer specified duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Social Services to the Department of Insurance, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. The Legislature hereby finds and declares the
- 2 following:
- 3 (a) California is home to nearly four million people over 65
- 4 years of age; the largest older adult population in the nation. This

1 number is expected to more than double over the next several  
2 decades as the baby boomers begin reaching this milestone.

3 (b) Continuing care retirement communities are an alternative  
4 for the long-term residential, social, and health care needs of  
5 California's elderly residents and seek to provide a continuum of  
6 care, minimize transfer trauma, and allow services to be provided  
7 in an appropriately licensed setting.

8 (c) Because elderly residents often both expend a significant  
9 portion of their savings in order to purchase care in a continuing  
10 care retirement community and expect to receive care at their  
11 continuing care retirement community for the rest of their lives,  
12 tragic consequences can result if a continuing care provider  
13 becomes insolvent or unable to provide responsible care.

14 (d) The Legislature has recognized the importance of continuing  
15 care provider solvency and the need for disclosure concerning the  
16 terms of agreements made between prospective residents and the  
17 continuing care provider, and concerning the operations of the  
18 continuing care retirement community.

19 (e) The Legislature defines continuing care contracts in terms  
20 of a promise of the future provision of services which are analogous  
21 to insurance products.

22 (f) Continuing care retirement communities have long-term  
23 obligations and may have a corporate or capital structure similar  
24 to insurance holding company systems, as defined in the Insurance  
25 Code.

26 (g) The Department of Insurance has the actuarial capability to  
27 oversee the long-term financial health of these communities. This  
28 is particularly important in the current economic climate where  
29 continuing care retirement community occupancy rates are  
30 declining and over 15 percent of the communities have a negative  
31 net worth.

32 (h) Therefore, it is the intent of the Legislature to transfer general  
33 regulatory responsibility for continuing care retirement  
34 communities, except for oversight and regulation of programs and  
35 services provided directly to residents of the communities, from  
36 the State Department of Social Services to the Department of  
37 Insurance.

38 SEC. 2. Section 1770 of the Health and Safety Code is amended  
39 to read:

1 1770. The Legislature finds, declares, and intends all of the  
2 following:

3 (a) Continuing care retirement communities are an alternative  
4 for the long-term residential, social, and health care needs of  
5 California’s elderly residents and seek to provide a continuum of  
6 care, minimize transfer trauma, and allow services to be provided  
7 in an appropriately licensed setting.

8 (b) Because elderly residents often both expend a significant  
9 portion of their savings in order to purchase care in a continuing  
10 care retirement community and expect to receive care at their  
11 continuing care retirement community for the rest of their lives,  
12 tragic consequences can result if a continuing care provider  
13 becomes insolvent or unable to provide responsible care.

14 (c) There is a need for disclosure concerning the terms of  
15 agreements made between prospective residents and the continuing  
16 care provider, and concerning the operations of the continuing care  
17 retirement community.

18 (d) Providers of continuing care should be required to obtain a  
19 certificate of authority to enter into continuing care contracts and  
20 should be monitored and regulated by the ~~State~~ Department of  
21 ~~Social Services Insurance~~.

22 (e) This chapter applies equally to for-profit and nonprofit  
23 provider entities.

24 (f) This chapter states the minimum requirements to be imposed  
25 upon any entity offering or providing continuing care.

26 (g) Because the authority to enter into continuing care contracts  
27 granted by the ~~State~~ Department of ~~Social Services Insurance~~ is  
28 neither a guarantee of performance by the providers nor an  
29 endorsement of any continuing care contract provisions,  
30 prospective residents must carefully consider the risks, benefits,  
31 and costs before signing a continuing care contract and should be  
32 encouraged to seek financial and legal advice before doing so.

33 SEC. 3. Section 1770.5 is added to the Health and Safety Code,  
34 to read:

35 1770.5. (a) The Department of Insurance shall succeed to and  
36 be vested with all the duties, powers, purposes, functions,  
37 responsibilities, and jurisdiction of the State Department of Social  
38 Services described in this chapter, except for oversight and  
39 regulation of programs and services provided directly to residents  
40 of continuing care retirement communities.

1 (b) All regulations, orders, and guidelines adopted pursuant to  
2 this chapter by the State Department of Social Services, including  
3 the former Continuing Care Contracts Branch in the State  
4 Department of Social Services, and any of its predecessors in effect  
5 immediately preceding the operative date of this section shall  
6 remain in effect and shall be fully enforceable unless and until  
7 readopted, amended, or repealed, or until they expire by their own  
8 terms.

9 (c) Any action by or against the State Department of Social  
10 Services pertaining to matters vested in the State Department of  
11 Social Services by this chapter shall not abate but shall continue  
12 in the name of the Department of Insurance, and the Department  
13 of Insurance shall be substituted for the State Department of Social  
14 Services and any of its predecessors by the court wherein the action  
15 is pending. The substitution shall not in any way affect the rights  
16 of the parties to the action. This substitution shall not be construed  
17 to affect the continuing responsibility of the State Department of  
18 Social Services to provide oversight and regulation of programs  
19 and services provided directly to residents of the communities.

20 (d) All books, documents, records, and property of the State  
21 Department of Social Services pertaining to functions transferred  
22 to the Department of Insurance pursuant to this section shall be  
23 transferred to the Department of Insurance.

24 (e) All unexpended balances of appropriations and other funds,  
25 particularly the Continuing Care Provider Fee Fund, available for  
26 use in connection with any function or the administration of any  
27 law transferred to the Department of Insurance pursuant to this  
28 section shall be transferred to the Department of Insurance for use  
29 for the purpose for which the appropriation was originally made  
30 or the funds were originally available. If there is any doubt as to  
31 where those balances and funds are transferred, the Department  
32 of Finance shall determine where the balances and funds are  
33 transferred.

34 (f) No contract, lease, license, or any other agreement to which  
35 the State Department of Social Services is a party pursuant to this  
36 chapter shall be void or voidable by reason of this section, but  
37 shall continue in full force and effect, with the Department of  
38 Insurance assuming all of the rights, obligations, and duties of the  
39 State Department of Social Services under this chapter. That  
40 assumption by the Department of Insurance shall not in any way

1 affect the rights of the parties to the contract, lease, license, or  
2 agreement.

3 (g) Every officer and employee of the State Department of Social  
4 Services who is performing a function transferred to the  
5 Department of Insurance pursuant to this section and who is serving  
6 in the state civil service, other than as a temporary employee, shall  
7 be transferred to the Department of Insurance pursuant to the  
8 provisions of Section 19050.9 of the Government Code. The status,  
9 position, and rights of these officers and employees shall not be  
10 affected by the transfer and shall be retained by the person as an  
11 officer or employee of the Department of Insurance, as the case  
12 may be, pursuant to the State Civil Service Act (Part 2  
13 (commencing with Section 18500) of Division 5 of Title 2 of the  
14 Government Code), except as to a position that is exempt from  
15 civil service.

16 (h) The commissioner shall review the requirements of this  
17 chapter and make recommendations to the Legislature as he or she  
18 deems necessary to improve the oversight and regulation of the  
19 financial management of continuing care retirement communities  
20 to protect consumers who enter into continuing care contracts.

21 SEC. 4. Section 1771 of the Health and Safety Code is amended  
22 to read:

23 1771. Unless the context otherwise requires, the definitions in  
24 this section govern the interpretation of this chapter.

25 (a) (1) "Affiliate" means any person, corporation, limited  
26 liability company, business trust, trust, partnership, unincorporated  
27 association, or other legal entity that directly or indirectly controls,  
28 is controlled by, or is under common control with, a provider or  
29 applicant.

30 (2) "Affinity group" means a grouping of entities sharing a  
31 common interest, philosophy, or connection (e.g., military officers,  
32 religion).

33 (3) "Annual report" means the report each provider is required  
34 to file annually with the department, as described in Section 1790.

35 (4) "Applicant" means any entity, or combination of entities,  
36 that submits and has pending an application to the department for  
37 a permit to accept deposits and a certificate of authority.

38 (5) "Assisted living services" includes, but is not limited to,  
39 assistance with personal activities of daily living, including  
40 dressing, feeding, toileting, bathing, grooming, mobility, and

1 associated tasks, to help provide for and maintain physical and  
2 psychosocial comfort.

3 (6) “Assisted living unit” means the living area or unit within  
4 a continuing care retirement community that is specifically  
5 designed to provide ongoing assisted living services.

6 (7) “Audited financial statement” means financial statements  
7 prepared in accordance with generally accepted accounting  
8 principles including the opinion of an independent certified public  
9 accountant, and notes to the financial statements considered  
10 customary or necessary to provide full disclosure and complete  
11 information regarding the provider’s financial statements, financial  
12 condition, and operation.

13 (b) (reserved)

14 (c) (1) “Cancel” means to destroy the force and effect of an  
15 agreement or continuing care contract.

16 (2) “Cancellation period” means the 90-day period, beginning  
17 when the resident physically moves into the continuing care  
18 retirement community, during which the resident may cancel the  
19 continuing care contract, as provided in Section 1788.2.

20 (3) “Care” means nursing, medical, or other health-related  
21 services, protection or supervision, assistance with the personal  
22 activities of daily living, or any combination of those services.

23 (4) “Cash equivalent” means certificates of deposit and United  
24 States treasury securities with a maturity of five years or less.

25 (5) “Certificate” or “certificate of authority” means the  
26 certificate issued by the department, properly executed and bearing  
27 the State Seal, authorizing a specified provider to enter into one  
28 or more continuing care contracts at a single specified continuing  
29 care retirement community.

30 (6) “*Commissioner*” means the Insurance Commissioner.

31 ~~(6)~~

32 (7) “Condition” means a restriction, specific action, or other  
33 requirement imposed by the department for the initial or continuing  
34 validity of a permit to accept deposits, a provisional certificate of  
35 authority, or a certificate of authority. A condition may limit the  
36 circumstances under which the provider may enter into any new  
37 deposit agreement or contract, or may be imposed as a condition  
38 precedent to the issuance of a permit to accept deposits, a  
39 provisional certificate of authority, or a certificate of authority.

40 ~~(7)~~

1 (8) “Consideration” means some right, interest, profit, or benefit  
2 paid, transferred, promised, or provided by one party to another  
3 as an inducement to contract. Consideration includes some  
4 forbearance, detriment, loss, or responsibility, that is given,  
5 suffered, or undertaken by a party as an inducement to another  
6 party to contract.

7 ~~(8)~~

8 (9) “Continuing care contract” means a contract that includes  
9 a continuing care promise made, in exchange for an entrance fee,  
10 the payment of periodic charges, or both types of payments. A  
11 continuing care contract may consist of one agreement or a series  
12 of agreements and other writings incorporated by reference.

13 ~~(9)~~

14 (10) “Continuing care advisory committee” means an advisory  
15 panel appointed pursuant to Section 1777.

16 ~~(10)~~

17 (11) “Continuing care promise” means a promise, expressed or  
18 implied, by a provider to provide one or more elements of care to  
19 an elderly resident for the duration of his or her life or for a term  
20 in excess of one year. Any such promise or representation, whether  
21 part of a continuing care contract, other agreement, or series of  
22 agreements, or contained in any advertisement, brochure, or other  
23 material, either written or oral, is a continuing care promise.

24 ~~(11)~~

25 (12) “Continuing care retirement community” means a facility  
26 located within the State of California where services promised in  
27 a continuing care contract are provided. A distinct phase of  
28 development approved by the department may be considered to  
29 be the continuing care retirement community when a project is  
30 being developed in successive distinct phases over a period of  
31 time. When the services are provided in residents’ own homes, the  
32 homes into which the provider takes those services are considered  
33 part of the continuing care retirement community.

34 ~~(12)~~

35 (13) “Control” means directing or causing the direction of the  
36 financial management or the policies of another entity, including  
37 an operator of a continuing care retirement community, whether  
38 by means of the controlling entity’s ownership interest, contract,  
39 or any other involvement. A parent entity or sole member of an  
40 entity controls a subsidiary entity provider for a continuing care

1 retirement community if its officers, directors, or agents directly  
2 participate in the management of the subsidiary entity or in the  
3 initiation or approval of policies that affect the continuing care  
4 retirement community's operations, including, but not limited to,  
5 approving budgets or the administrator for a continuing care  
6 retirement community.

7 (d) (1) "Department" means the Department of Insurance,  
8 except with respect to the oversight and regulation of programs  
9 and services provided directly to residents of the communities, in  
10 which case "department" means the State Department of Social  
11 Services.

12 (2) "Deposit" means any transfer of consideration, including a  
13 promise to transfer money or property, made by a depositor to any  
14 entity that promises or proposes to promise to provide continuing  
15 care, but is not authorized to enter into a continuing care contract  
16 with the potential depositor.

17 (3) "Deposit agreement" means any agreement made between  
18 any entity accepting a deposit and a depositor. Deposit agreements  
19 for deposits received by an applicant prior to the department's  
20 release of funds from the deposit escrow account shall be subject  
21 to the requirements described in Section 1780.4.

22 (4) "Depository" means a bank or institution that is a member  
23 of the Federal Deposit Insurance Corporation or a comparable  
24 deposit insurance program.

25 (5) "Depositor" means any prospective resident who pays a  
26 deposit. Where any portion of the consideration transferred to an  
27 applicant as a deposit or to a provider as consideration for a  
28 continuing care contract is transferred by a person other than the  
29 prospective resident or a resident, that third-party transferor shall  
30 have the same cancellation or refund rights as the prospective  
31 resident or resident for whose benefit the consideration was  
32 transferred.

33 (6) "Director" means the Director of Social Services.

34 (e) (1) "Elderly" means an individual who is 60 years of age  
35 or older.

36 (2) "Entity" means an individual, partnership, corporation,  
37 limited liability company, and any other form for doing business.  
38 Entity includes a person, sole proprietorship, estate, trust,  
39 association, and joint venture.

1 (3) “Entrance fee” means the sum of any initial, amortized, or  
2 deferred transfer of consideration made or promised to be made  
3 by, or on behalf of, a person entering into a continuing care contract  
4 for the purpose of ensuring care or related services pursuant to that  
5 continuing care contract or as full or partial payment for the  
6 promise to provide care for the term of the continuing care contract.  
7 Entrance fee includes the purchase price of a condominium,  
8 cooperative, or other interest sold in connection with a promise of  
9 continuing care. An initial, amortized, or deferred transfer of  
10 consideration that is greater in value than 12 times the monthly  
11 care fee shall be presumed to be an entrance fee.

12 (4) “Equity” means the value of real property in excess of the  
13 aggregate amount of all liabilities secured by the property.

14 (5) “Equity interest” means an interest held by a resident in a  
15 continuing care retirement community that consists of either an  
16 ownership interest in any part of the continuing care retirement  
17 community property or a transferable membership that entitles the  
18 holder to reside at the continuing care retirement community.

19 (6) “Equity project” means a continuing care retirement  
20 community where residents receive an equity interest in the  
21 continuing care retirement community property.

22 (7) “Equity securities” shall refer generally to large and  
23 midcapitalization corporate stocks that are publicly traded and  
24 readily liquidated for cash, and shall include shares in mutual funds  
25 that hold portfolios consisting predominantly of these stocks and  
26 other qualifying assets, as defined by Section 1792.2. Equity  
27 securities shall also include other similar securities that are  
28 specifically approved by the department.

29 (8) “Escrow agent” means a bank or institution, including, but  
30 not limited to, a title insurance company, approved by the  
31 department to hold and render accountings for deposits of cash or  
32 cash equivalents.

33 (f) “Facility” means any place or accommodation where a  
34 provider provides or will provide a resident with care or related  
35 services, whether or not the place or accommodation is constructed,  
36 owned, leased, rented, or otherwise contracted for by the provider.

37 (g) (reserved)

38 (h) (reserved)

39 (i) (1) “Inactive certificate of authority” means a certificate that  
40 has been terminated under Section 1793.8.

- 1 (2) “Investment securities” means any of the following:
- 2 (A) Direct obligations of the United States, including obligations
- 3 issued or held in book-entry form on the books of the United States
- 4 Department of the Treasury or obligations the timely payment of
- 5 the principal of, and the interest on, which are fully guaranteed by
- 6 the United States.
- 7 (B) Obligations, debentures, notes, or other evidences of
- 8 indebtedness issued or guaranteed by any of the following:
- 9 (i) The Federal Home Loan Bank System.
- 10 (ii) The Export-Import Bank of the United States.
- 11 (iii) The Federal Financing Bank.
- 12 (iv) The Government National Mortgage Association.
- 13 (v) The Farmer’s Home Administration.
- 14 (vi) The Federal Home Loan Mortgage Corporation of the
- 15 Federal Housing Administration.
- 16 (vii) Any agency, department, or other instrumentality of the
- 17 United States if the obligations are rated in one of the two highest
- 18 rating categories of each rating agency rating those obligations.
- 19 (C) Bonds of the State of California or of any county, city and
- 20 county, or city in this state, if rated in one of the two highest rating
- 21 categories of each rating agency rating those bonds.
- 22 (D) Commercial paper of finance companies and banking
- 23 institutions rated in one of the two highest categories of each rating
- 24 agency rating those instruments.
- 25 (E) Repurchase agreements fully secured by collateral security
- 26 described in subparagraph (A) or (B), as evidenced by an opinion
- 27 of counsel, if the collateral is held by the provider or a third party
- 28 during the term of the repurchase agreement, pursuant to the terms
- 29 of the agreement, subject to liens or claims of third parties, and
- 30 has a market value, which is determined at least every 14 days, at
- 31 least equal to the amount so invested.
- 32 (F) Long-term investment agreements, which have maturity
- 33 dates in excess of one year, with financial institutions, including,
- 34 but not limited to, banks and insurance companies or their affiliates,
- 35 if the financial institution’s paying ability for debt obligations or
- 36 long-term claims or the paying ability of a related guarantor of the
- 37 financial institution for these obligations or claims, is rated in one
- 38 of the two highest rating categories of each rating agency rating
- 39 those instruments, or if the short-term investment agreements are
- 40 with the financial institution or the related guarantor of the financial

1 institution, the long-term or short-term debt obligations, whichever  
2 is applicable, of which are rated in one of the two highest long-term  
3 or short-term rating categories, of each rating agency rating the  
4 bonds of the financial institution or the related guarantor, provided  
5 that if the rating falls below the two highest rating categories, the  
6 investment agreement shall allow the provider the option to replace  
7 the financial institution or the related guarantor of the financial  
8 institution or shall provide for the investment securities to be fully  
9 collateralized by investments described in subparagraph (A), and,  
10 provided further, if so collateralized, that the provider has a  
11 perfected first security lien on the collateral, as evidenced by an  
12 opinion of counsel and the collateral is held by the provider.

13 (G) Banker's acceptances or certificates of deposit of, or time  
14 deposits in, any savings and loan association that meets any of the  
15 following criteria:

16 (i) The debt obligations of the savings and loan association, or  
17 in the case of a principal bank, of the bank holding company, are  
18 rated in one of the two highest rating categories of each rating  
19 agency rating those instruments.

20 (ii) The certificates of deposit or time deposits are fully insured  
21 by the Federal Deposit Insurance Corporation.

22 (iii) The certificates of deposit or time deposits are secured at  
23 all times, in the manner and to the extent provided by law, by  
24 collateral security described in subparagraph (A) or (B) with a  
25 market value, valued at least quarterly, of no less than the original  
26 amount of moneys so invested.

27 (H) Taxable money market government portfolios restricted to  
28 obligations issued or guaranteed as to payment of principal and  
29 interest by the full faith and credit of the United States.

30 (I) Obligations the interest on which is excluded from gross  
31 income for federal income tax purposes and money market mutual  
32 funds whose portfolios are restricted to these obligations, if the  
33 obligations or mutual funds are rated in one of the two highest  
34 rating categories by each rating agency rating those obligations.

35 (J) Bonds that are not issued by the United States or any federal  
36 agency, but that are listed on a national exchange and that are rated  
37 at least "A" by Moody's Investors Service, or the equivalent rating  
38 by Standard and Poor's Corporation or Fitch Investors Service.

39 (K) Bonds not listed on a national exchange that are traded on  
40 an over-the-counter basis, and that are rated at least "Aa" by

1 Moody’s Investors Service or “AA” by Standard and Poor’s  
2 Corporation or Fitch Investors Service.

3 (j) (reserved)

4 (k) (reserved)

5 (l) “Life care contract” means a continuing care contract that  
6 includes a promise, expressed or implied, by a provider to provide  
7 or pay for routine services at all levels of care, including acute  
8 care and the services of physicians and surgeons, to the extent not  
9 covered by other public or private insurance benefits, to a resident  
10 for the duration of his or her life. Care shall be provided under a  
11 life care contract in a continuing care retirement community having  
12 a comprehensive continuum of care, including a skilled nursing  
13 facility, under the ownership and supervision of the provider on  
14 or adjacent to the premises. No change may be made in the monthly  
15 fee based on level of care. A life care contract shall also include  
16 provisions to subsidize residents who become financially unable  
17 to pay their monthly care fees.

18 (m) (1) “Monthly care fee” means the fee charged to a resident  
19 in a continuing care contract on a monthly or other periodic basis  
20 for current accommodations and services including care, board,  
21 or lodging. Periodic entrance fee payments or other prepayments  
22 shall not be monthly care fees.

23 (2) “Monthly fee contract” means a continuing care contract  
24 that requires residents to pay monthly care fees.

25 (n) “Nonambulatory person” means a person who is unable to  
26 leave a building unassisted under emergency conditions in the  
27 manner described by Section 13131.

28 (o) (reserved)

29 (p) (1) “Per capita cost” means a continuing care retirement  
30 community’s operating expenses, excluding depreciation, divided  
31 by the average number of residents.

32 (2) “Periodic charges” means fees paid by a resident on a  
33 periodic basis.

34 (3) “Permanent closure” means the voluntary or involuntary  
35 termination or forfeiture, as specified in subdivisions (a), (b), (g),  
36 (h), and (i) of Section 1793.7, of a provider’s certificate of authority  
37 or license, or another action that results in the permanent relocation  
38 of residents. Permanent closure does not apply in the case of a  
39 natural disaster or other event out of the provider’s control.

1 (4) “Permit to accept deposits” means a written authorization  
2 by the department permitting an applicant to enter into deposit  
3 agreements regarding a single specified continuing care retirement  
4 community.

5 (5) “Prepaid contract” means a continuing care contract in which  
6 the monthly care fee, if any, may not be adjusted to cover the actual  
7 cost of care and services.

8 (6) “Preferred access” means that residents who have previously  
9 occupied a residential living unit have a right over other persons  
10 to any assisted living or skilled nursing beds that are available at  
11 the community.

12 (7) “Processing fee” means a payment to cover administrative  
13 costs of processing the application of a depositor or prospective  
14 resident.

15 (8) “Promise to provide one or more elements of care” means  
16 any expressed or implied representation that one or more elements  
17 of care will be provided or will be available, such as by preferred  
18 access.

19 (9) “Proposes” means a representation that an applicant or  
20 provider will or intends to make a future promise to provide care,  
21 including a promise that is subject to a condition, such as the  
22 construction of a continuing care retirement community or the  
23 acquisition of a certificate of authority.

24 (10) “Provider” means an entity that provides continuing care,  
25 makes a continuing care promise, or proposes to promise to provide  
26 continuing care. “Provider” also includes any entity that controls  
27 an entity that provides continuing care, makes a continuing care  
28 promise, or proposes to promise to provide continuing care. The  
29 department shall determine whether an entity controls another  
30 entity for purposes of this article. No homeowner’s association,  
31 cooperative, or condominium association may be a provider.

32 (11) “Provisional certificate of authority” means the certificate  
33 issued by the department, properly executed and bearing the State  
34 Seal, under Section 1786. A provisional certificate of authority  
35 shall be limited to the specific continuing care retirement  
36 community and number of units identified in the applicant’s  
37 application.

38 (q) (reserved)

39 (r) (1) “Refund reserve” means the reserve a provider is required  
40 to maintain, as provided in Section 1792.6.

1 (2) “Refundable contract” means a continuing care contract that  
 2 includes a promise, expressed or implied, by the provider to pay  
 3 an entrance fee refund or to repurchase the transferor’s unit,  
 4 membership, stock, or other interest in the continuing care  
 5 retirement community when the promise to refund some or all of  
 6 the initial entrance fee extends beyond the resident’s sixth year of  
 7 residency. Providers that enter into refundable contracts shall be  
 8 subject to the refund reserve requirements of Section 1792.6. A  
 9 continuing care contract that includes a promise to repay all or a  
 10 portion of an entrance fee that is conditioned upon reoccupancy  
 11 or resale of the unit previously occupied by the resident shall not  
 12 be considered a refundable contract for purposes of the refund  
 13 reserve requirements of Section 1792.6, provided that this  
 14 conditional promise of repayment is not referred to by the applicant  
 15 or provider as a “refund.”

16 (3) “Resale fee” means a levy by the provider against the  
 17 proceeds from the sale of a transferor’s equity interest.

18 (4) “Reservation fee” refers to consideration collected by an  
 19 entity that has made a continuing care promise or is proposing to  
 20 make this promise and has complied with Section 1771.4.

21 (5) “Resident” means a person who enters into a continuing  
 22 care contract with a provider, or who is designated in a continuing  
 23 care contract to be a person being provided or to be provided  
 24 services, including care, board, or lodging.

25 (6) “Residential care facility for the elderly” means a housing  
 26 arrangement as defined by Section 1569.2.

27 (7) “Residential living unit” means a living unit in a continuing  
 28 care retirement community that is not used exclusively for assisted  
 29 living services or nursing services.

30 (8) “Residential temporary relocation” means the relocation of  
 31 one or more residents, except in the case of a natural disaster that  
 32 is out of the provider’s control, from one or more residential living  
 33 units, assisted living units, skilled nursing units, or a wing, floor,  
 34 or entire continuing care retirement community building, due to a  
 35 change of use or major repairs or renovations. A residential  
 36 temporary relocation shall mean a relocation pursuant to this  
 37 subdivision that lasts for a period of at least nine months but that  
 38 does not exceed 18 months without the written agreement of the  
 39 resident.

40 (s) (reserved)

1 (t) (1) “Termination” means the ending of a continuing care  
2 contract as provided for in the terms of the continuing care contract.

3 (2) “Transfer trauma” means death, depression, or regressive  
4 behavior, that is caused by the abrupt and involuntary transfer of  
5 an elderly resident from one home to another and results from a  
6 loss of familiar physical environment, loss of well-known  
7 neighbors, attendants, nurses and medical personnel, the stress of  
8 an abrupt break in the small routines of daily life, or the loss of  
9 visits from friends and relatives who may be unable to reach the  
10 new facility.

11 (3) “Transferor” means a person who transfers, or promises to  
12 transfer, consideration in exchange for care and related services  
13 under a continuing care contract or proposed continuing care  
14 contract, for the benefit of another. A transferor shall have the  
15 same rights to cancel and obtain a refund as the depositor under  
16 the deposit agreement or the resident under a continuing care  
17 contract.

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