

ASSEMBLY BILL

No. 2661

Introduced by Assembly Member Burke

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2661, as introduced, Burke. Continuing care retirement communities: refundable contracts.

Existing law generally provides for the regulation of continuing care retirement communities and continuing care contracts by the State Department of Social Services. Existing law requires any provider offering a refundable contract, defined as a continuing care contract that includes a promise by the provider to pay an entrance fee refund or to repurchase the transferor's interest in the continuing care retirement community when the promise to refund some or all of the initial entrance fee extends beyond the resident's 6th year of residency, to maintain a refund reserve in trust for residents of the continuing care community. That refund reserve requirement does not apply to a continuing care contract that includes a promise to repay all or a portion of an entrance fee that is conditioned upon reoccupancy or resale of the unit previously occupied by the resident, if the conditional promise of repayment is not referred to by the applicant or provider as a "refund."

This bill would instead make the refund reserve requirement inapplicable to a continuing care contract that includes a promise to repay all or a portion of an entrance fee that is conditioned upon reoccupancy or resale of any unit previously occupied by the resident.

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

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

- 1 SECTION 1. Section 1771 of the Health and Safety Code is
- 2 amended to read:
- 3 1771. Unless the context otherwise requires, the definitions in
- 4 this section govern the interpretation of this chapter.
- 5 (a) (1) “Affiliate” means any person, corporation, limited
- 6 liability company, business trust, trust, partnership, unincorporated
- 7 association, or other legal entity that directly or indirectly controls,
- 8 is controlled by, or is under common control with, a provider or
- 9 applicant.
- 10 (2) “Affinity group” means a grouping of entities sharing a
- 11 common interest, philosophy, or connection (e.g., military officers,
- 12 religion).
- 13 (3) “Annual report” means the report each provider is required
- 14 to file annually with the department, as described in Section 1790.
- 15 (4) “Applicant” means any entity, or combination of entities,
- 16 that submits and has pending an application to the department for
- 17 a permit to accept deposits and a certificate of authority.
- 18 (5) “Assisted living services” includes, but is not limited to,
- 19 assistance with personal activities of daily living, including
- 20 dressing, feeding, toileting, bathing, grooming, mobility, and
- 21 associated tasks, to help provide for and maintain physical and
- 22 psychosocial comfort.
- 23 (6) “Assisted living unit” means the living area or unit within
- 24 a continuing care retirement community that is specifically
- 25 designed to provide ongoing assisted living services.
- 26 (7) “Audited financial statement” means financial statements
- 27 prepared in accordance with generally accepted accounting
- 28 ~~principles~~ *principles*, including the opinion of an independent
- 29 certified public accountant, and notes to the financial statements
- 30 considered customary or necessary to provide full disclosure and
- 31 complete information regarding the provider’s financial statements,
- 32 financial condition, and operation.
- 33 (b) (reserved)
- 34 (c) (1) “Cancel” means to destroy the force and effect of an
- 35 agreement or continuing care contract.

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

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

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

10 (5) “Certificate” or “certificate of authority” means the
11 certificate issued by the department, properly executed and bearing
12 the State Seal, authorizing a specified provider to enter into one
13 or more continuing care contracts at a single specified continuing
14 care retirement community.

15 (6) “Condition” means a restriction, specific action, or other
16 requirement imposed by the department for the initial or continuing
17 validity of a permit to accept deposits, a provisional certificate of
18 authority, or a certificate of authority. A condition may limit the
19 circumstances under which the provider may enter into any new
20 deposit agreement or contract, or may be imposed as a condition
21 precedent to the issuance of a permit to accept deposits, a
22 provisional certificate of authority, or a certificate of authority.

23 (7) “Consideration” means some right, interest, profit, or benefit
24 paid, transferred, promised, or provided by one party to another
25 as an inducement to contract. Consideration includes some
26 forbearance, detriment, loss, or responsibility, that is given,
27 suffered, or undertaken by a party as an inducement to another
28 party to contract.

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

34 (9) “Continuing care promise” means a promise, expressed or
35 implied, by a provider to provide one or more elements of care to
36 an elderly resident for the duration of his or her life or for a term
37 in excess of one year. Any such promise or representation, whether
38 part of a continuing care contract, other agreement, or series of
39 agreements, or contained in any advertisement, brochure, or other
40 material, either written or oral, is a continuing care promise.

1 (10) “Continuing care retirement community” means a facility
2 located within the State of California where services promised in
3 a continuing care contract are provided. A distinct phase of
4 development approved by the department may be considered to
5 be the continuing care retirement community when a project is
6 being developed in successive distinct phases over a period of
7 time. When the services are provided in residents’ own homes, the
8 homes into which the provider takes those services are considered
9 part of the continuing care retirement community.

10 (11) “Control” means directing or causing the direction of the
11 financial management or the policies of another entity, including
12 an operator of a continuing care retirement community, whether
13 by means of the controlling entity’s ownership interest, contract,
14 or any other involvement. A parent entity or sole member of an
15 entity controls a subsidiary entity provider for a continuing care
16 retirement community if its officers, directors, or agents directly
17 participate in the management of the subsidiary entity or in the
18 initiation or approval of policies that affect the continuing care
19 retirement community’s operations, including, but not limited to,
20 approving budgets or the administrator for a continuing care
21 retirement community.

22 (d) (1) “Department” means the State Department of Social
23 Services.

24 (2) “Deposit” means any transfer of consideration, including a
25 promise to transfer money or property, made by a depositor to any
26 entity that promises or proposes to promise to provide continuing
27 care, but is not authorized to enter into a continuing care contract
28 with the potential depositor.

29 (3) “Deposit agreement” means any agreement made between
30 any entity accepting a deposit and a depositor. Deposit agreements
31 for deposits received by an applicant prior to the department’s
32 release of funds from the deposit escrow account shall be subject
33 to the requirements described in Section 1780.4.

34 (4) “Depository” means a bank or institution that is a member
35 of the Federal Deposit Insurance Corporation or a comparable
36 deposit insurance program.

37 (5) “Depositor” means any prospective resident who pays a
38 deposit. Where any portion of the consideration transferred to an
39 applicant as a deposit or to a provider as consideration for a
40 continuing care contract is transferred by a person other than the

1 prospective resident or a resident, that third-party transferor shall
2 have the same cancellation or refund rights as the prospective
3 resident or resident for whose benefit the consideration was
4 transferred.

5 (6) “Director” means the Director of Social Services.

6 (e) (1) “Elderly” means an individual who is 60 years of age
7 or older.

8 (2) “Entity” means an individual, partnership, corporation,
9 limited liability company, and any other form for doing business.
10 Entity includes a person, sole proprietorship, estate, trust,
11 association, and joint venture.

12 (3) “Entrance fee” means the sum of any initial, amortized, or
13 deferred transfer of consideration made or promised to be made
14 by, or on behalf of, a person entering into a continuing care contract
15 for the purpose of ensuring care or related services pursuant to that
16 continuing care contract or as full or partial payment for the
17 promise to provide care for the term of the continuing care contract.
18 Entrance fee includes the purchase price of a condominium,
19 cooperative, or other interest sold in connection with a promise of
20 continuing care. An initial, amortized, or deferred transfer of
21 consideration that is greater in value than 12 times the monthly
22 care fee shall be presumed to be an entrance fee.

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

25 (5) “Equity interest” means an interest held by a resident in a
26 continuing care retirement community that consists of either an
27 ownership interest in any part of the continuing care retirement
28 community property or a transferable membership that entitles the
29 holder to reside at the continuing care retirement community.

30 (6) “Equity project” means a continuing care retirement
31 community where residents receive an equity interest in the
32 continuing care retirement community property.

33 (7) “Equity securities” shall refer generally to large and
34 midcapitalization corporate stocks that are publicly traded and
35 readily liquidated for cash, and shall include shares in mutual funds
36 that hold portfolios consisting predominantly of these stocks and
37 other qualifying assets, as defined by Section 1792.2. Equity
38 securities shall also include other similar securities that are
39 specifically approved by the department.

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

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

9 (g) (reserved)

10 (h) (reserved)

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

13 (2) “Investment securities” means any of the following:

14 (A) Direct obligations of the United States, including obligations
15 issued or held in book-entry form on the books of the United States
16 Department of the Treasury or obligations the timely payment of
17 the principal of, and the interest on, which are fully guaranteed by
18 the United States.

19 (B) Obligations, debentures, notes, or other evidences of
20 indebtedness issued or guaranteed by any of the following:

21 (i) The Federal Home Loan Bank System.

22 (ii) The Export-Import Bank of the United States.

23 (iii) The Federal Financing Bank.

24 (iv) The Government National Mortgage Association.

25 (v) ~~The Farmer’s~~ *Farmers* Home Administration.

26 (vi) The Federal Home Loan Mortgage Corporation of the
27 Federal Housing Administration.

28 (vii) Any agency, department, or other instrumentality of the
29 United States if the obligations are rated in one of the two highest
30 rating categories of each rating agency rating those obligations.

31 (C) Bonds of the State of California or of any county, city and
32 county, or city in this state, if rated in one of the two highest rating
33 categories of each rating agency rating those bonds.

34 (D) Commercial paper of finance companies and banking
35 institutions rated in one of the two highest categories of each rating
36 agency rating those instruments.

37 (E) Repurchase agreements fully secured by collateral security
38 described in subparagraph (A) or (B), as evidenced by an opinion
39 of counsel, if the collateral is held by the provider or a third party
40 during the term of the repurchase agreement, pursuant to the terms

1 of the agreement, subject to liens or claims of third parties, and
2 has a market value, which is determined at least every 14 days, at
3 least equal to the amount so invested.

4 (F) Long-term investment agreements, which have maturity
5 dates in excess of one year, with financial institutions, including,
6 but not limited to, banks and insurance companies or their affiliates,
7 if the financial institution's paying ability for debt obligations or
8 long-term claims or the paying ability of a related guarantor of the
9 financial institution for these obligations or claims, is rated in one
10 of the two highest rating categories of each rating agency rating
11 those instruments, or if the short-term investment agreements are
12 with the financial institution or the related guarantor of the financial
13 institution, the long-term or short-term debt obligations, whichever
14 is applicable, of which are rated in one of the two highest long-term
15 or short-term rating categories, of each rating agency rating the
16 bonds of the financial institution or the related guarantor, provided
17 that if the rating falls below the two highest rating categories, the
18 investment agreement shall allow the provider the option to replace
19 the financial institution or the related guarantor of the financial
20 institution or shall provide for the investment securities to be fully
21 collateralized by investments described in subparagraph (A), and,
22 provided further, if so collateralized, that the provider has a
23 perfected first security lien on the collateral, as evidenced by an
24 opinion of counsel and the collateral is held by the provider.

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

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

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

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

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

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

9 (J) Bonds that are not issued by the United States or any federal
10 agency, but that are listed on a national exchange and that are rated
11 at least “A” by Moody’s Investors Service, or the equivalent rating
12 by Standard and Poor’s Corporation or Fitch Investors Service.

13 (K) Bonds not listed on a national exchange that are traded on
14 an over-the-counter basis, and that are rated at least “Aa” by
15 Moody’s Investors Service or “AA” by Standard and Poor’s
16 Corporation or Fitch Investors Service.

17 (j) (reserved)

18 (k) (reserved)

19 (l) “Life care contract” means a continuing care contract that
20 includes a promise, expressed or implied, by a provider to provide
21 or pay for routine services at all levels of care, including acute
22 care and the services of physicians and surgeons, to the extent not
23 covered by other public or private insurance benefits, to a resident
24 for the duration of his or her life. Care shall be provided under a
25 life care contract in a continuing care retirement community having
26 a comprehensive continuum of care, including a skilled nursing
27 facility, under the ownership and supervision of the provider on
28 or adjacent to the premises. ~~No~~ A change ~~may~~ shall not be made
29 in the monthly fee based on level of care. A life care contract shall
30 also include provisions to subsidize residents who become
31 financially unable to pay their monthly care fees.

32 (m) (1) “Monthly care fee” means the fee charged to a resident
33 in a continuing care contract on a monthly or other periodic basis
34 for current accommodations and ~~services~~ services, including care,
35 board, or lodging. Periodic entrance fee payments or other
36 prepayments shall not be monthly care fees.

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

- 1 (n) “Nonambulatory person” means a person who is unable to
2 leave a building unassisted under emergency conditions in the
3 manner described by Section 13131.
- 4 (o) (reserved)
- 5 (p) (1) “Per capita cost” means a continuing care retirement
6 community’s operating expenses, excluding depreciation, divided
7 by the average number of residents.
- 8 (2) “Periodic charges” means fees paid by a resident on a
9 periodic basis.
- 10 (3) “Permanent closure” means the voluntary or involuntary
11 termination or forfeiture, as specified in subdivisions (a), (b), (g),
12 (h), and (i) of Section 1793.7, of a provider’s certificate of authority
13 or license, or another action that results in the permanent relocation
14 of residents. Permanent closure does not apply in the case of a
15 natural disaster or other event out of the provider’s control.
- 16 (4) “Permit to accept deposits” means a written authorization
17 by the department permitting an applicant to enter into deposit
18 agreements regarding a single specified continuing care retirement
19 community.
- 20 (5) “Prepaid contract” means a continuing care contract in which
21 the monthly care fee, if any, may not be adjusted to cover the actual
22 cost of care and services.
- 23 (6) “Preferred access” means that residents who have previously
24 occupied a residential living unit have a right over other persons
25 to any assisted living or skilled nursing beds that are available at
26 the community.
- 27 (7) “Processing fee” means a payment to cover administrative
28 costs of processing the application of a depositor or prospective
29 resident.
- 30 (8) “Promise to provide one or more elements of care” means
31 any expressed or implied representation that one or more elements
32 of care will be provided or will be available, such as by preferred
33 access.
- 34 (9) “Proposes” means a representation that an applicant or
35 provider will or intends to make a future promise to provide care,
36 including a promise that is subject to a condition, such as the
37 construction of a continuing care retirement community or the
38 acquisition of a certificate of authority.
- 39 (10) “Provider” means an entity that provides continuing care,
40 makes a continuing care promise, or proposes to promise to provide

1 continuing care. “Provider” also includes any entity that controls
2 an entity that provides continuing care, makes a continuing care
3 promise, or proposes to promise to provide continuing care. The
4 department shall determine whether an entity controls another
5 entity for purposes of this article. No homeowner’s association,
6 cooperative, or condominium association may be a provider.

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

13 (q) (reserved)

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

16 (2) “Refundable contract” means a continuing care contract that
17 includes a promise, expressed or implied, by the provider to pay
18 an entrance fee refund or to repurchase the transferor’s unit,
19 membership, stock, or other interest in the continuing care
20 retirement community when the promise to refund some or all of
21 the initial entrance fee extends beyond the resident’s sixth year of
22 residency. Providers that enter into refundable contracts shall be
23 subject to the refund reserve requirements of Section 1792.6. A
24 continuing care contract that includes a promise to repay all or a
25 portion of an entrance fee that is conditioned upon reoccupancy
26 or resale of ~~the~~ *any* unit previously occupied by the resident shall
27 not be considered a refundable contract for purposes of the refund
28 reserve requirements of Section 1792.6, provided that this
29 conditional promise of repayment is not referred to by the applicant
30 or provider as a “refund.”

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

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

36 (5) “Resident” means a person who enters into a continuing
37 care contract with a provider, or who is designated in a continuing
38 care contract to be a person being provided or to be provided
39 services, including care, board, or lodging.

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

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

6 (8) “Residential temporary relocation” means the relocation of
7 one or more residents, except in the case of a natural disaster that
8 is out of the provider’s control, from one or more residential living
9 units, assisted living units, skilled nursing units, or a wing, floor,
10 or entire continuing care retirement community building, due to a
11 change of use or major repairs or renovations. A residential
12 temporary relocation shall mean a relocation pursuant to this
13 subdivision that lasts for a period of at least nine months but that
14 does not exceed 18 months without the written agreement of the
15 resident.

16 (s) (reserved)

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

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

27 (3) “Transferor” means a person who transfers, or promises to
28 transfer, consideration in exchange for care and related services
29 under a continuing care contract or proposed continuing care
30 contract, for the benefit of another. A transferor shall have the
31 same rights to cancel and obtain a refund as the depositor under
32 the deposit agreement or the resident under a continuing care
33 contract.