

AMENDED IN ASSEMBLY APRIL 20, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2661

Introduced by Assembly Member Burke

February 19, 2016

An act to amend ~~Section~~ *Sections 1771 and 1788* of the Health and Safety Code, relating to continuing care retirement communities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2661, as amended, 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.

Existing law requires that a continuing care contract contain specified information, including an itemization of the services that are included in the monthly fee and the services that are available at an extra charge. Existing law also requires that a continuing care contract contain the policy or terms for refunding any portion of the entrance fee, in the event of cancellation, termination, or death, and requires every continuing care contract that provides for a refund of all or a part of the entrance fee to state specified duties of the provider if the contract is canceled or terminated by the provider.

This bill would additionally require, if the provider cancels or terminates a contract that includes a repayment of all or a portion of the entrance fee conditioned upon the resale of a unit, the contract to state the average and longest amount of time that it has taken for a resident to receive a full repayment within the last 5 calendar years. This bill would also prohibit the provider from charging the resident or his or her estate a monthly fee after the contract is terminated and the unit has been permanently vacated by the resident, except as specified.

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.

1 (5) “Assisted living services” includes, but is not limited to,
2 assistance with personal activities of daily living, including
3 dressing, feeding, toileting, bathing, grooming, mobility, and
4 associated tasks, to help provide for and maintain physical and
5 psychosocial comfort.

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

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

16 (b) (reserved)

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

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

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

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

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

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

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

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

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

28 (11) “Control” means directing or causing the direction of the
29 financial management or the policies of another entity, including
30 an operator of a continuing care retirement community, whether
31 by means of the controlling entity’s ownership interest, contract,
32 or any other involvement. A parent entity or sole member of an
33 entity controls a subsidiary entity provider for a continuing care
34 retirement community if its officers, directors, or agents directly
35 participate in the management of the subsidiary entity or in the
36 initiation or approval of policies that affect the continuing care
37 retirement community’s operations, including, but not limited to,
38 approving budgets or the administrator for a continuing care
39 retirement community.

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

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

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

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

16 (5) “Depositor” means any prospective resident who pays a
17 deposit. Where any portion of the consideration transferred to an
18 applicant as a deposit or to a provider as consideration for a
19 continuing care contract is transferred by a person other than the
20 prospective resident or a resident, that third-party transferor shall
21 have the same cancellation or refund rights as the prospective
22 resident or resident for whose benefit the consideration was
23 transferred.

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

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

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

31 (3) “Entrance fee” means the sum of any initial, amortized, or
32 deferred transfer of consideration made or promised to be made
33 by, or on behalf of, a person entering into a continuing care contract
34 for the purpose of ensuring care or related services pursuant to that
35 continuing care contract or as full or partial payment for the
36 promise to provide care for the term of the continuing care contract.
37 Entrance fee includes the purchase price of a condominium,
38 cooperative, or other interest sold in connection with a promise of
39 continuing care. An initial, amortized, or deferred transfer of

1 consideration that is greater in value than 12 times the monthly
 2 care fee shall be presumed to be an entrance fee.

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

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

10 (6) “Equity project” means a continuing care retirement
 11 community where residents receive an equity interest in the
 12 continuing care retirement community property.

13 (7) “Equity securities” shall refer generally to large and
 14 midcapitalization corporate stocks that are publicly traded and
 15 readily liquidated for cash, and shall include shares in mutual funds
 16 that hold portfolios consisting predominantly of these stocks and
 17 other qualifying assets, as defined by Section 1792.2. Equity
 18 securities shall also include other similar securities that are
 19 specifically approved by the department.

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

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

28 (g) (reserved)

29 (h) (reserved)

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

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

33 (A) Direct obligations of the United States, including obligations
 34 issued or held in book-entry form on the books of the United States
 35 Department of the Treasury or obligations the timely payment of
 36 the principal of, and the interest on, which are fully guaranteed by
 37 the United States.

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

40 (i) The Federal Home Loan Bank System.

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

1 provided further, if so collateralized, that the provider has a
 2 perfected first security lien on the collateral, as evidenced by an
 3 opinion of counsel and the collateral is held by the provider.

4 (G) Banker’s acceptances or certificates of deposit of, or time
 5 deposits in, any savings and loan association that meets any of the
 6 following criteria:

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

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

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

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

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

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

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

34 (j) (reserved)

35 (k) (reserved)

36 (l) “Life care contract” means a continuing care contract that
 37 includes a promise, expressed or implied, by a provider to provide
 38 or pay for routine services at all levels of care, including acute
 39 care and the services of physicians and surgeons, to the extent not
 40 covered by other public or private insurance benefits, to a resident

1 for the duration of his or her life. Care shall be provided under a
2 life care contract in a continuing care retirement community having
3 a comprehensive continuum of care, including a skilled nursing
4 facility, under the ownership and supervision of the provider on
5 or adjacent to the premises. A change shall not be made in the
6 monthly fee based on level of care. A life care contract shall also
7 include provisions to subsidize residents who become financially
8 unable to pay their monthly care fees.

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

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

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

19 (o) (reserved)

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

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

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

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

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

38 (6) “Preferred access” means that residents who have previously
39 occupied a residential living unit have a right over other persons

1 to any assisted living or skilled nursing beds that are available at
2 the community.

3 (7) “Processing fee” means a payment to cover administrative
4 costs of processing the application of a depositor or prospective
5 resident.

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

10 (9) “Proposes” means a representation that an applicant or
11 provider will or intends to make a future promise to provide care,
12 including a promise that is subject to a condition, such as the
13 construction of a continuing care retirement community or the
14 acquisition of a certificate of authority.

15 (10) “Provider” means an entity that provides continuing care,
16 makes a continuing care promise, or proposes to promise to provide
17 continuing care. “Provider” also includes any entity that controls
18 an entity that provides continuing care, makes a continuing care
19 promise, or proposes to promise to provide continuing care. The
20 department shall determine whether an entity controls another
21 entity for purposes of this article. No homeowner’s association,
22 cooperative, or condominium association may be a provider.

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

29 (q) (reserved)

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

32 (2) “Refundable contract” means a continuing care contract that
33 includes a promise, expressed or implied, by the provider to pay
34 an entrance fee refund or to repurchase the transferor’s unit,
35 membership, stock, or other interest in the continuing care
36 retirement community when the promise to refund some or all of
37 the initial entrance fee extends beyond the resident’s sixth year of
38 residency. Providers that enter into refundable contracts shall be
39 subject to the refund reserve requirements of Section 1792.6. A
40 continuing care contract that includes a promise to repay all or a

1 portion of an entrance fee that is conditioned upon reoccupancy
2 or resale of any unit previously occupied by the resident shall not
3 be considered a refundable contract for purposes of the refund
4 reserve requirements of Section 1792.6, provided that this
5 conditional promise of repayment is not referred to by the applicant
6 or provider as a “refund.”

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

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

12 (5) “Resident” means a person who enters into a continuing
13 care contract with a provider, or who is designated in a continuing
14 care contract to be a person being provided or to be provided
15 services, including care, board, or lodging.

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

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

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

31 (s) (reserved)

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

34 (2) “Transfer trauma” means death, depression, or regressive
35 behavior, that is caused by the abrupt and involuntary transfer of
36 an elderly resident from one home to another and results from a
37 loss of familiar physical environment, loss of well-known
38 neighbors, attendants, nurses and medical personnel, the stress of
39 an abrupt break in the small routines of daily life, or the loss of

1 visits from friends and relatives who may be unable to reach the
 2 new facility.

3 (3) “Transferor” means a person who transfers, or promises to
 4 transfer, consideration in exchange for care and related services
 5 under a continuing care contract or proposed continuing care
 6 contract, for the benefit of another. A transferor shall have the
 7 same rights to cancel and obtain a refund as the depositor under
 8 the deposit agreement or the resident under a continuing care
 9 contract.

10 *SEC. 2. Section 1788 of the Health and Safety Code is amended*
 11 *to read:*

12 1788. (a) A continuing care contract shall contain all of the
 13 following:

- 14 (1) The legal name and address of each provider.
- 15 (2) The name and address of the continuing care retirement
 16 community.
- 17 (3) The resident’s name and the identity of the unit the resident
 18 will occupy.
- 19 (4) If there is a transferor other than the resident, the transferor
 20 shall be a party to the contract and the transferor’s name and
 21 address shall be specified.
- 22 (5) If the provider has used the name of any charitable or
 23 religious or nonprofit organization in its title before January 1,
 24 1979, and continues to use that name, and that organization is not
 25 responsible for the financial and contractual obligations of the
 26 provider or the obligations specified in the continuing care contract,
 27 the provider shall include in every continuing care contract a
 28 conspicuous statement that clearly informs the resident that the
 29 organization is not financially responsible.
- 30 (6) The date the continuing care contract is signed by the
 31 resident and, where applicable, any other transferor.
- 32 (7) The duration of the continuing care contract.
- 33 (8) A list of the services that will be made available to the
 34 resident as required to provide the appropriate level of care. The
 35 list of services shall include the services required as a condition
 36 for licensure as a residential care facility for the elderly, including
 37 all of the following:
 - 38 (A) Regular observation of the resident’s health status to ensure
 39 that his or her dietary needs, social needs, and needs for special
 40 services are satisfied.

1 (B) Safe and healthful living accommodations, including
2 housekeeping services and utilities.

3 (C) Maintenance of house rules for the protection of residents.

4 (D) A planned activities program, which includes social and
5 recreational activities appropriate to the interests and capabilities
6 of the resident.

7 (E) Three balanced, nutritious meals and snacks made available
8 daily, including special diets prescribed by a physician as a medical
9 necessity.

10 (F) Assisted living services.

11 (G) Assistance with taking medications.

12 (H) Central storing and distribution of medications.

13 (I) Arrangements to meet health needs, including arranging
14 transportation.

15 (9) An itemization of the services that are included in the
16 monthly fee and the services that are available at an extra charge.
17 The provider shall attach a current fee schedule to the continuing
18 care contract. *The provider shall not charge the resident or his or*
19 *her estate a monthly fee after the contract is terminated and the*
20 *unit has been permanently vacated by the resident, unless the fee*
21 *is part of an equity interest contract.*

22 (10) The procedures and conditions under which a resident may
23 be voluntarily and involuntarily transferred from a designated
24 living unit. The transfer procedures, at a minimum, shall include
25 provisions addressing all of the following circumstances under
26 which a transfer may be authorized:

27 (A) A continuing care retirement community may transfer a
28 resident under the following conditions, taking into account the
29 appropriateness and necessity of the transfer and the goal of
30 promoting resident independence:

31 (i) The resident is nonambulatory. The definition of
32 “nonambulatory,” as provided in Section 13131, shall either be
33 stated in full in the continuing care contract or be cited. If Section
34 13131 is cited, a copy of the statute shall be made available to the
35 resident, either as an attachment to the continuing care contract or
36 by specifying that it will be provided upon request. If a
37 nonambulatory resident occupies a room that has a fire clearance
38 for nonambulatory residents, transfer shall not be necessary.

- 1 (ii) The resident develops a physical or mental condition that
2 endangers the health, safety, or well-being of the resident or another
3 person.
- 4 (iii) The resident’s condition or needs require the resident’s
5 transfer to an assisted living care unit or skilled nursing facility,
6 because the level of care required by the resident exceeds that
7 which may be lawfully provided in the living unit.
- 8 (iv) The resident’s condition or needs require the resident’s
9 transfer to a nursing facility, hospital, or other facility, and the
10 provider has no facilities available to provide that level of care.
- 11 (B) Before the continuing care retirement community transfers
12 a resident under any of the conditions set forth in subparagraph
13 (A), the community shall satisfy all of the following requirements:
 - 14 (i) Involve the resident and the resident’s responsible person,
15 as defined in paragraph (6) of subdivision (r) of Section 87101 of
16 Title 22 of the California Code of Regulations, and upon the
17 resident’s or responsible person’s request, family members, or the
18 resident’s physician or other appropriate health professional, in
19 the assessment process that forms the basis for the level of care
20 transfer decision by the provider. The provider shall offer an
21 explanation of the assessment process. If an assessment tool or
22 tools, including scoring and evaluating criteria, are used in the
23 determination of the appropriateness of the transfer, the provider
24 shall make copies of the completed assessment available upon the
25 request of the resident or the resident’s responsible person.
 - 26 (ii) Prior to sending a formal notification of transfer, the provider
27 shall conduct a care conference with the resident and the resident’s
28 responsible person, and upon the resident’s or responsible person’s
29 request, family members, and the resident’s health care
30 professionals, to explain the reasons for transfer.
 - 31 (iii) Notify the resident and the resident’s responsible person
32 of the reasons for the transfer in writing.
 - 33 (iv) Notwithstanding any other provision of this subparagraph,
34 if the resident does not have impairment of cognitive abilities, the
35 resident may request that his or her responsible person not be
36 involved in the transfer process.
 - 37 (v) The notice of transfer shall be made at least 30 days before
38 the transfer is expected to occur, except when the health or safety
39 of the resident or other residents is in danger, or the transfer is
40 required by the resident’s urgent medical needs. Under those

1 circumstances, the written notice shall be made as soon as
2 practicable before the transfer.

3 (vi) The written notice shall contain the reasons for the transfer,
4 the effective date, the designated level of care or location to which
5 the resident will be transferred, a statement of the resident's right
6 to a review of the transfer decision at a care conference, as provided
7 for in subparagraph (C), and for disputed transfer decisions, the
8 right to review by the Continuing Care Contracts Branch of the
9 State Department of Social Services, as provided for in
10 subparagraph (D). The notice shall also contain the name, address,
11 and telephone number of the department's Continuing Care
12 Contracts Branch.

13 (vii) The continuing care retirement community shall provide
14 sufficient preparation and orientation to the resident to ensure a
15 safe and orderly transfer and to minimize trauma.

16 (C) The resident has the right to review the transfer decision at
17 a subsequent care conference that shall include the resident, the
18 resident's responsible person, and upon the resident's or
19 responsible person's request, family members, the resident's
20 physician or other appropriate health care professional, and
21 members of the provider's interdisciplinary team. The local
22 ombudsperson may also be included in the care conference, upon
23 the request of the resident, the resident's responsible person, or
24 the provider.

25 (D) For disputed transfer decisions, the resident or the resident's
26 responsible person has the right to a prompt and timely review of
27 the transfer process by the Continuing Care Contracts Branch of
28 the State Department of Social Services.

29 (E) The decision of the department's Continuing Care Contracts
30 Branch shall be in writing and shall determine whether the provider
31 failed to comply with the transfer process pursuant to
32 subparagraphs (A) to (C), inclusive. Pending the decision of the
33 Continuing Care Contracts Branch, the provider shall specify any
34 additional care the provider believes is necessary in order for the
35 resident to remain in his or her unit. The resident may be required
36 to pay for the extra care, as provided in the contract.

37 (F) Transfer of a second resident when a shared accommodation
38 arrangement is terminated.

39 (11) Provisions describing any changes in the resident's monthly
40 fee and any changes in the entrance fee refund payable to the

1 resident that will occur if the resident transfers from any unit,
2 including, but not limited to, terminating his or her contract after
3 18 months of residential temporary relocation, as defined in
4 paragraph (8) of subdivision (r) of Section 1771.

5 (12) The provider’s continuing obligations, if any, in the event
6 a resident is transferred from the continuing care retirement
7 community to another facility.

8 (13) The provider’s obligations, if any, to resume care upon the
9 resident’s return after a transfer from the continuing care retirement
10 community.

11 (14) The provider’s obligations to provide services to the
12 resident while the resident is absent from the continuing care
13 retirement community.

14 (15) The conditions under which the resident must permanently
15 release his or her living unit.

16 (16) If real or personal properties are transferred in lieu of cash,
17 a statement specifying each item’s value at the time of transfer,
18 and how the value was ascertained.

19 (A) An itemized receipt that includes the information described
20 above is acceptable if incorporated as a part of the continuing care
21 contract.

22 (B) When real property is or will be transferred, the continuing
23 care contract shall include a statement that the deed or other
24 instrument of conveyance shall specify that the real property is
25 conveyed pursuant to a continuing care contract and may be subject
26 to rescission by the transferor within 90 days from the date that
27 the resident first occupies the residential unit.

28 (C) The failure to comply with this paragraph shall not affect
29 the validity of title to real property transferred pursuant to this
30 chapter.

31 (17) The amount of the entrance fee.

32 (18) In the event two parties have jointly paid the entrance fee
33 or other payment that allows them to occupy the unit, the
34 continuing care contract shall describe how any refund of entrance
35 fees is allocated.

36 (19) The amount of any processing fee.

37 (20) The amount of any monthly care fee.

38 (21) For continuing care contracts that require a monthly care
39 fee or other periodic payment, the continuing care contract shall
40 include the following:

1 (A) A statement that the occupancy and use of the
2 accommodations by the resident is contingent upon the regular
3 payment of the fee.

4 (B) The regular rate of payment agreed upon (per day, week,
5 or month).

6 (C) A provision specifying whether payment will be made in
7 advance or after services have been provided.

8 (D) A provision specifying the provider will adjust monthly
9 care fees for the resident's support, maintenance, board, or lodging,
10 when a resident requires medical attention while away from the
11 continuing care retirement community.

12 (E) A provision specifying whether a credit or allowance will
13 be given to a resident who is absent from the continuing care
14 retirement community or from meals. This provision shall also
15 state, when applicable, that the credit may be permitted at the
16 discretion or by special permission of the provider.

17 (F) A statement of billing practices, procedures, and timelines.
18 A provider shall allow a minimum of 14 days between the date a
19 bill is sent and the date payment is due. A charge for a late payment
20 may only be assessed if the amount and any condition for the
21 penalty is stated on the bill.

22 (22) All continuing care contracts that include monthly care
23 fees shall address changes in monthly care fees by including either
24 of the following provisions:

25 (A) For prepaid continuing care contracts, which include
26 monthly care fees, one of the following methods:

27 (i) Fees shall not be subject to change during the lifetime of the
28 agreement.

29 (ii) Fees shall not be increased by more than a specified number
30 of dollars in any one year and not more than a specified number
31 of dollars during the lifetime of the agreement.

32 (iii) Fees shall not be increased in excess of a specified
33 percentage over the preceding year and not more than a specified
34 percentage during the lifetime of the agreement.

35 (B) For monthly fee continuing care contracts, except prepaid
36 contracts, changes in monthly care fees shall be based on projected
37 costs, prior year per capita costs, and economic indicators.

38 (23) A provision requiring that the provider give written notice
39 to the resident at least 30 days in advance of any change in the

1 resident's monthly care fees or in the price or scope of any
2 component of care or other services.

3 (24) A provision indicating whether the resident's rights under
4 the continuing care contract include any proprietary interests in
5 the assets of the provider or in the continuing care retirement
6 community, or both. Any statement in a contract concerning an
7 ownership interest shall appear in a large-sized font or print.

8 (25) If the continuing care retirement community property is
9 encumbered by a security interest that is senior to any claims the
10 residents may have to enforce continuing care contracts, a provision
11 shall advise the residents that any claims they may have under the
12 continuing care contract are subordinate to the rights of the secured
13 lender. For equity projects, the continuing care contract shall
14 specify the type and extent of the equity interest and whether any
15 entity holds a security interest.

16 (26) Notice that the living units are part of a continuing care
17 retirement community that is licensed as a residential care facility
18 for the elderly and, as a result, any duly authorized agent of the
19 department may, upon proper identification and upon stating the
20 purpose of his or her visit, enter and inspect the entire premises at
21 any time, without advance notice.

22 (27) A conspicuous statement, in at least 10-point boldface type
23 in immediate proximity to the space reserved for the signatures of
24 the resident and, if applicable, the transferor, that provides as
25 follows: "You, the resident or transferor, may cancel the transaction
26 without cause at any time within 90 days from the date you first
27 occupy your living unit. See the attached notice of cancellation
28 form for an explanation of this right."

29 (28) Notice that during the cancellation period, the continuing
30 care contract may be canceled upon 30 days' written notice by the
31 provider without cause, or that the provider waives this right.

32 (29) The terms and conditions under which the continuing care
33 contract may be terminated after the cancellation period by either
34 party, including any health or financial conditions.

35 (30) A statement that, after the cancellation period, a provider
36 may unilaterally terminate the continuing care contract only if the
37 provider has good and sufficient cause.

38 (A) Any continuing care contract containing a clause that
39 provides for a continuing care contract to be terminated for "just
40 cause," "good cause," or other similar provision, shall also include

1 a provision that none of the following activities by the resident,
2 or on behalf of the resident, constitutes “just cause,” “good cause,”
3 or otherwise activates the termination provision:

4 (i) Filing or lodging a formal complaint with the department or
5 other appropriate authority.

6 (ii) Participation in an organization or affiliation of residents,
7 or other similar lawful activity.

8 (B) The provision required by this paragraph shall also state
9 that the provider shall not discriminate or retaliate in any manner
10 against any resident of a continuing care retirement community
11 for contacting the department, or any other state, county, or city
12 agency, or any elected or appointed government official to file a
13 complaint or for any other reason, or for participation in a residents’
14 organization or association.

15 (C) Nothing in this paragraph diminishes the provider’s ability
16 to terminate the continuing care contract for good and sufficient
17 cause.

18 (31) A statement that at least 90 days’ written notice to the
19 resident is required for a unilateral termination of the continuing
20 care contract by the provider.

21 (32) A statement concerning the length of notice that a resident
22 is required to give the provider to voluntarily terminate the
23 continuing care contract after the cancellation period.

24 (33) The policy or terms for refunding any portion of the
25 entrance fee, in the event of cancellation, termination, or death.
26 Every continuing care contract that provides for a refund of all or
27 a part of the entrance fee shall also do all of the following:

28 (A) Specify the amount, if any, the resident has paid or will pay
29 for upgrades, special features, or modifications to the resident’s
30 unit.

31 (B) State that if the continuing care contract is canceled or
32 terminated by the provider, the provider shall do both of the
33 following:

34 (i) Amortize the specified amount at the same rate as the
35 resident’s entrance fee.

36 (ii) Refund the unamortized balance to the resident at the same
37 time the provider pays the resident’s entrance fee refund.

38 (C) State that the resident has a right to terminate his or her
39 contract after 18 months of residential temporary relocation, as
40 defined in paragraph (8) of subdivision (r) of Section 1771.

1 Provisions for refunds due to cancellation pursuant to this
2 subparagraph shall be set forth in the contract.

3 *(D) For all contracts with a repayment of all or a portion of*
4 *the entrance fee conditioned upon the resale of a unit, state the*
5 *average and longest amount of time that it has taken for a resident*
6 *to receive a full repayment within the last five calendar years.*

7 (34) The following notice at the bottom of the signatory page:

8
9 “NOTICE” (date)

10
11 “This is a continuing care contract as defined by paragraph (8)
12 of subdivision (c), or subdivision (l) of Section 1771 of the
13 California Health and Safety Code. This continuing care contract
14 form has been approved by the State Department of Social Services
15 as required by subdivision (b) of Section 1787 of the California
16 Health and Safety Code. The basis for this approval was a
17 determination that (provider name) has submitted a contract that
18 complies with the minimum statutory requirements applicable to
19 continuing care contracts. The department does not approve or
20 disapprove any of the financial or health care coverage provisions
21 in this contract. Approval by the department is NOT a guaranty
22 of performance or an endorsement of any continuing care contract
23 provisions. Prospective transferors and residents are strongly
24 encouraged to carefully consider the benefits and risks of this
25 continuing care contract and to seek financial and legal advice
26 before signing.”

27 (35) The provider may not attempt to absolve itself in the
28 continuing care contract from liability for its negligence by any
29 statement to that effect, and shall include the following statement
30 in the contract: “Nothing in this continuing care contract limits
31 either the provider’s obligation to provide adequate care and
32 supervision for the resident or any liability on the part of the
33 provider which may result from the provider’s failure to provide
34 this care and supervision.”

35 (36) Provisions describing how the provider will proceed in the
36 event of a closure, including an explanation of how the provider
37 will comply with Sections 1793.80, 1793.81, 1793.82, and 1793.83.

38 (b) A life care contract shall also provide that:

39 (1) All levels of care, including acute care and physicians’ and
40 surgeons’ services, will be provided to a resident.

1 (2) Care will be provided for the duration of the resident's life
2 unless the life care contract is canceled or terminated by the
3 provider during the cancellation period or after the cancellation
4 period for good cause.

5 (3) A comprehensive continuum of care will be provided to the
6 resident, including skilled nursing, in a facility under the ownership
7 and supervision of the provider on, or adjacent to, the continuing
8 care retirement community premises.

9 (4) Monthly care fees will not be changed based on the resident's
10 level of care or service.

11 (5) A resident who becomes financially unable to pay his or her
12 monthly care fees shall be subsidized provided the resident's
13 financial need does not arise from action by the resident to divest
14 the resident of his or her assets.

15 (c) Continuing care contracts may include provisions that do
16 any of the following:

17 (1) Subsidize a resident who becomes financially unable to pay
18 for his or her monthly care fees at some future date. If a continuing
19 care contract provides for subsidizing a resident, it may also
20 provide for any of the following:

21 (A) The resident shall apply for any public assistance or other
22 aid for which he or she is eligible and that the provider may apply
23 for assistance on behalf of the resident.

24 (B) The provider's decision shall be final and conclusive
25 regarding any adjustments to be made or any action to be taken
26 regarding any charitable consideration extended to any of its
27 residents.

28 (C) The provider is entitled to payment for the actual costs of
29 care out of any property acquired by the resident subsequent to
30 any adjustment extended to the resident under this paragraph, or
31 from any other property of the resident that the resident failed to
32 disclose.

33 (D) The provider may pay the monthly premium of the resident's
34 health insurance coverage under Medicare to ensure that those
35 payments will be made.

36 (E) The provider may receive an assignment from the resident
37 of the right to apply for and to receive the benefits, for and on
38 behalf of the resident.

39 (F) The provider is not responsible for the costs of furnishing
40 the resident with any services, supplies, and medication, when

1 reimbursement is reasonably available from any governmental
2 agency, or any private insurance.

3 (G) Any refund due to the resident at the termination of the
4 continuing care contract may be offset by any prior subsidy to the
5 resident by the provider.

6 (2) Limit responsibility for costs associated with the treatment
7 or medication of an ailment or illness existing prior to the date of
8 admission. In these cases, the medical or surgical exceptions, as
9 disclosed by the medical entrance examination, shall be listed in
10 the continuing care contract or in a medical report attached to and
11 made a part of the continuing care contract.

12 (3) Identify legal remedies that may be available to the provider
13 if the resident makes any material misrepresentation or omission
14 pertaining to the resident’s assets or health.

15 (4) Restrict transfer or assignments of the resident’s rights and
16 privileges under a continuing care contract due to the personal
17 nature of the continuing care contract.

18 (5) Protect the provider’s ability to waive a resident’s breach
19 of the terms or provisions of the continuing care contract in specific
20 instances without relinquishing its right to insist upon full
21 compliance by the resident with all terms or provisions in the
22 contract.

23 (6) Provide that the resident shall reimburse the provider for
24 any uninsured loss or damage to the resident’s unit, beyond normal
25 wear and tear, resulting from the resident’s carelessness or
26 negligence.

27 (7) Provide that the resident agrees to observe the off-limit areas
28 of the continuing care retirement community designated by the
29 provider for safety reasons. The provider may not include any
30 provision in a continuing care contract that absolves the provider
31 from liability for its negligence.

32 (8) Provide for the subrogation to the provider of the resident’s
33 rights in the case of injury to a resident caused by the acts or
34 omissions of a third party, or for the assignment of the resident’s
35 recovery or benefits in this case to the provider, to the extent of
36 the value of the goods and services furnished by the provider to
37 or on behalf of the resident as a result of the injury.

38 (9) Provide for a lien on any judgment, settlement, or recovery
39 for any additional expense incurred by the provider in caring for
40 the resident as a result of injury.

- 1 (10) Require the resident's cooperation and assistance in the
2 diligent prosecution of any claim or action against any third party.
- 3 (11) Provide for the appointment of a conservator or guardian
4 by a court with jurisdiction in the event a resident becomes unable
5 to handle his or her personal or financial affairs.
- 6 (12) Allow a provider, whose property is tax exempt, to charge
7 the resident, on a pro rata basis, property taxes, or in-lieu taxes,
8 that the provider is required to pay.
- 9 (13) Make any other provision approved by the department.
- 10 (d) A copy of the resident's rights as described in Section 1771.7
11 shall be attached to every continuing care contract.
- 12 (e) A copy of the current audited financial statement of the
13 provider shall be attached to every continuing care contract. For
14 a provider whose current audited financial statement does not
15 accurately reflect the financial ability of the provider to fulfill the
16 continuing care contract obligations, the financial statement
17 attached to the continuing care contract shall include all of the
18 following:
- 19 (1) A disclosure that the reserve requirement has not yet been
20 determined or met, and that entrance fees will not be held in
21 escrow.
- 22 (2) A disclosure that the ability to provide the services promised
23 in the continuing care contract will depend on successful
24 compliance with the approved financial plan.
- 25 (3) A copy of the approved financial plan for meeting the reserve
26 requirements.
- 27 (4) Any other supplemental statements or attachments necessary
28 to accurately represent the provider's financial ability to fulfill its
29 continuing care contract obligations.
- 30 (f) A schedule of the average monthly care fees charged to
31 residents for each type of residential living unit for each of the five
32 years preceding execution of the continuing care contract shall be
33 attached to every continuing care contract. The provider shall
34 update this schedule annually at the end of each fiscal year. If the
35 continuing care retirement community has not been in existence
36 for five years, the information shall be provided for each of the
37 years the continuing care retirement community has been in
38 existence.
- 39 (g) If any continuing care contract provides for a health
40 insurance policy for the benefit of the resident, the provider shall

1 attach to the continuing care contract a binder complying with
2 Sections 382 and 382.5 of the Insurance Code.

3 (h) The provider shall attach to every continuing care contract
4 a completed form in duplicate, captioned "Notice of Cancellation."
5 The notice shall be easily detachable, and shall contain, in at least
6 10-point boldface type, the following statement:

7
8 "NOTICE OF CANCELLATION" (date)
9 Your first date of occupancy under this contract
10 is: _____

11
12 "You may cancel this transaction, without any penalty within
13 90 calendar days from the above date.

14 If you cancel, any property transferred, any payments made by
15 you under the contract, and any negotiable instrument executed
16 by you will be returned within 14 calendar days after making
17 possession of the living unit available to the provider. Any security
18 interest arising out of the transaction will be canceled.

19 If you cancel, you are obligated to pay a reasonable processing
20 fee to cover costs and to pay for the reasonable value of the services
21 received by you from the provider up to the date you canceled or
22 made available to the provider the possession of any living unit
23 delivered to you under this contract, whichever is later.

24 If you cancel, you must return possession of any living unit
25 delivered to you under this contract to the provider in substantially
26 the same condition as when you took possession.

27 Possession of the living unit must be made available to the
28 provider within 20 calendar days of your notice of cancellation.
29 If you fail to make the possession of any living unit available to
30 the provider, then you remain liable for performance of all
31 obligations under the contract.

32 To cancel this transaction, mail or deliver a signed and dated
33 copy of this cancellation notice, or any other written notice, or
34 send a telegram

35
36 to _____
37 (Name of provider)

38 at _____
39 (Address of provider's place of business)

40 not later than midnight of _____ (date).

1 I hereby cancel this
2 transaction
3
4
5

(Resident's or
Transferor's signature)"

O