

AMENDED IN ASSEMBLY JULY 6, 2015
AMENDED IN ASSEMBLY JUNE 25, 2015
AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 475

Introduced by Senator Monning

February 26, 2015

An act to amend Sections 1788 and 1788.4 of the Health and Safety Code, relating to continuing care contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 475, as amended, Monning. Continuing care contracts: cancellation: payments.

Existing law requires a continuing care retirement facility, as defined, to possess a certificate of authority issued by the State Department of Social Services before it can enter into a continuing care contract, as defined. Existing law requires that a continuing care contract be in writing and contain specified information. Existing law states a continuing care contract may be canceled without cause by written notice from either party within 90 days of the resident's initial occupancy.

Existing law requires the provider to pay, during the cancellation period, all refunds owed to a resident within 14 days after a resident makes possession of the living unit available to the provider. Existing law requires the provider to pay a lump-sum payment that is conditioned upon resale of a unit to the resident within 14 days after resale of the unit.

This bill would require the continuing care retirement facility to pay the full lump-sum payment that is conditioned upon resale of a unit to

the resident within 14 days after resale of the unit. The bill would require the continuing care retirement facility, for contracts signed after January 1, 2016, to pay the resident ~~at least 20%~~ *or his or her estate a specified portion* of the full lump-sum payment, notwithstanding a provider's documented good-faith effort to resell the unit, if the unit remains vacant 120 days after the resident's termination. The bill would require any payment balance not paid to the resident within 120 days to accrue interest at a rate not lower than the United States prime lending rate until the full lump-sum payment is made. The bill would require any payment balance not paid to the resident within 180 days to accrue interest at a rate not lower than 2% plus the United States prime lending rate until the full lump-sum payment is made. The bill would require the facility to make the lump-sum payment to the resident's estate if the resident is deceased.

The bill would make corresponding changes to require a continuing care contract to contain a statement that a provider is prohibited from charging the resident or his or her ~~descendants~~ *estate* a monthly fee once a unit has been permanently vacated by the resident, unless the fee is part of an equity interest contract. The bill would also require a continuing care contract that provides for a refund or repayment of a lump sum of all or part of the entrance fee to include a statement that the provider will make a good faith effort to reoccupy or resell a unit for which a lump-sum payment is conditioned upon resale of the unit.

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 1788 of the Health and Safety Code is
- 2 amended to read:
- 3 1788. (a) A continuing care contract shall contain all of the
- 4 following:
- 5 (1) The legal name and address of each provider.
- 6 (2) The name and address of the continuing care retirement
- 7 community.
- 8 (3) The resident's name and the identity of the unit the resident
- 9 will occupy.
- 10 (4) If there is a transferor other than the resident, the transferor
- 11 shall be a party to the contract and the transferor's name and
- 12 address shall be specified.

1 (5) If the provider has used the name of any charitable or
2 religious or nonprofit organization in its title before January 1,
3 1979, and continues to use that name, and that organization is not
4 responsible for the financial and contractual obligations of the
5 provider or the obligations specified in the continuing care contract,
6 the provider shall include in every continuing care contract a
7 conspicuous statement that clearly informs the resident that the
8 organization is not financially responsible.

9 (6) The date the continuing care contract is signed by the
10 resident and, where applicable, any other transferor.

11 (7) The duration of the continuing care contract.

12 (8) A list of the services that will be made available to the
13 resident as required to provide the appropriate level of care. The
14 list of services shall include the services required as a condition
15 for licensure as a residential care facility for the elderly, including
16 all of the following:

17 (A) Regular observation of the resident's health status to ensure
18 that his or her dietary needs, social needs, and needs for special
19 services are satisfied.

20 (B) Safe and healthful living accommodations, including
21 housekeeping services and utilities.

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

23 (D) A planned activities program, which includes social and
24 recreational activities appropriate to the interests and capabilities
25 of the resident.

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

29 (F) Assisted living services.

30 (G) Assistance with taking medications.

31 (H) Central storing and distribution of medications.

32 (I) Arrangements to meet health needs, including arranging
33 transportation.

34 (9) An itemization of the services that are included in the
35 monthly fee and the services that are available at an extra charge.
36 The provider shall attach a current fee schedule to the continuing
37 care contract. The schedule shall state that a provider is prohibited
38 from charging the resident or his or her ~~descendants~~ *estate* a
39 monthly fee once a unit has been permanently vacated by the
40 resident, unless the fee is part of an equity interest contract.

1 (10) The procedures and conditions under which a resident may
2 be voluntarily and involuntarily transferred from a designated
3 living unit. The transfer procedures, at a minimum, shall include
4 provisions addressing all of the following circumstances under
5 which a transfer may be authorized:

6 (A) A continuing care retirement community may transfer a
7 resident under the following conditions, taking into account the
8 appropriateness and necessity of the transfer and the goal of
9 promoting resident independence:

10 (i) The resident is nonambulatory. The definition of
11 “nonambulatory,” as provided in Section 13131, shall either be
12 stated in full in the continuing care contract or be cited. If Section
13 13131 is cited, a copy of the statute shall be made available to the
14 resident, either as an attachment to the continuing care contract or
15 by specifying that it will be provided upon request. If a
16 nonambulatory resident occupies a room that has a fire clearance
17 for nonambulatory residents, transfer shall not be necessary.

18 (ii) The resident develops a physical or mental condition that
19 endangers the health, safety, or well-being of the resident or another
20 person.

21 (iii) The resident’s condition or needs require the resident’s
22 transfer to an assisted living care unit or skilled nursing facility,
23 because the level of care required by the resident exceeds that
24 which may be lawfully provided in the living unit.

25 (iv) The resident’s condition or needs require the resident’s
26 transfer to a nursing facility, hospital, or other facility, and the
27 provider has no facilities available to provide that level of care.

28 (B) Before the continuing care retirement community transfers
29 a resident under any of the conditions set forth in subparagraph
30 (A), the community shall satisfy all of the following requirements:

31 (i) Involve the resident and the resident’s responsible person,
32 as defined in paragraph (6) of subdivision (r) of Section 87101 of
33 Title 22 of the California Code of Regulations, and upon the
34 resident’s or responsible person’s request, family members, or the
35 resident’s physician or other appropriate health professional, in
36 the assessment process that forms the basis for the level of care
37 transfer decision by the provider. The provider shall offer an
38 explanation of the assessment process. If an assessment tool or
39 tools, including scoring and evaluating criteria, are used in the
40 determination of the appropriateness of the transfer, the provider

1 shall make copies of the completed assessment available upon the
2 request of the resident or the resident's responsible person.

3 (ii) Prior to sending a formal notification of transfer, the provider
4 shall conduct a care conference with the resident and the resident's
5 responsible person, and upon the resident's or responsible person's
6 request, family members, and the resident's health care
7 professionals, to explain the reasons for transfer.

8 (iii) Notify the resident and the resident's responsible person
9 of the reasons for the transfer in writing.

10 (iv) Notwithstanding any other provision of this subparagraph,
11 if the resident does not have impairment of cognitive abilities, the
12 resident may request that his or her responsible person not be
13 involved in the transfer process.

14 (v) The notice of transfer shall be made at least 30 days before
15 the transfer is expected to occur, except when the health or safety
16 of the resident or other residents is in danger, or the transfer is
17 required by the resident's urgent medical needs. Under those
18 circumstances, the written notice shall be made as soon as
19 practicable before the transfer.

20 (vi) The written notice shall contain the reasons for the transfer,
21 the effective date, the designated level of care or location to which
22 the resident will be transferred, a statement of the resident's right
23 to a review of the transfer decision at a care conference, as provided
24 for in subparagraph (C), and for disputed transfer decisions, the
25 right to review by the Continuing Care Contracts Branch of the
26 State Department of Social Services, as provided for in
27 subparagraph (D). The notice shall also contain the name, address,
28 and telephone number of the department's Continuing Care
29 Contracts Branch.

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

33 (C) The resident has the right to review the transfer decision at
34 a subsequent care conference that shall include the resident, the
35 resident's responsible person, and upon the resident's or
36 responsible person's request, family members, the resident's
37 physician or other appropriate health care professional, and
38 members of the provider's interdisciplinary team. The local
39 ombudsperson may also be included in the care conference, upon

1 the request of the resident, the resident's responsible person, or
2 the provider.

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

7 (E) The decision of the department's Continuing Care Contracts
8 Branch shall be in writing and shall determine whether the provider
9 failed to comply with the transfer process pursuant to
10 subparagraphs (A) to (C), inclusive. Pending the decision of the
11 Continuing Care Contracts Branch, the provider shall specify any
12 additional care the provider believes is necessary in order for the
13 resident to remain in his or her unit. The resident may be required
14 to pay for the extra care, as provided in the contract.

15 (F) Transfer of a second resident when a shared accommodation
16 arrangement is terminated.

17 (11) Provisions describing any changes in the resident's monthly
18 fee and any changes in the entrance fee refund payable to the
19 resident that will occur if the resident transfers from any unit,
20 including, but not limited to, terminating his or her contract after
21 18 months of residential temporary relocation, as defined in
22 paragraph (8) of subdivision (r) of Section 1771. Unless the fee is
23 part of an equity interest contract, a provider is prohibited from
24 charging the resident or his or her ~~descendants~~ *estate* a monthly
25 fee once a unit has been permanently vacated by the resident.

26 (12) The provider's continuing obligations, if any, in the event
27 a resident is transferred from the continuing care retirement
28 community to another facility.

29 (13) The provider's obligations, if any, to resume care upon the
30 resident's return after a transfer from the continuing care retirement
31 community.

32 (14) The provider's obligations to provide services to the
33 resident while the resident is absent from the continuing care
34 retirement community.

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

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

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

4 (B) When real property is or will be transferred, the continuing
5 care contract shall include a statement that the deed or other
6 instrument of conveyance shall specify that the real property is
7 conveyed pursuant to a continuing care contract and may be subject
8 to rescission by the transferor within 90 days from the date that
9 the resident first occupies the residential unit.

10 (C) The failure to comply with this paragraph shall not affect
11 the validity of title to real property transferred pursuant to this
12 chapter.

13 (17) The amount of the entrance fee.

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

18 (19) The amount of any processing fee.

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

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

23 (A) A statement that the occupancy and use of the
24 accommodations by the resident is contingent upon the regular
25 payment of the fee.

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

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

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

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

39 (F) A statement of billing practices, procedures, and timelines.
40 A provider shall allow a minimum of 14 days between the date a

1 bill is sent and the date payment is due. A charge for a late payment
2 may only be assessed if the amount and any condition for the
3 penalty is stated on the bill.

4 (G) A statement that the provider is prohibited from charging
5 the resident or his or her ~~descendants~~ *estate* a monthly fee once a
6 unit has been permanently vacated by the resident, unless the fee
7 is part of an equity interest contract.

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

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

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

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

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

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

24 (23) A provision requiring that the provider give written notice
25 to the resident at least 30 days in advance of any change in the
26 resident's monthly care fees or in the price or scope of any
27 component of care or other services.

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

33 (25) If the continuing care retirement community property is
34 encumbered by a security interest that is senior to any claims the
35 residents may have to enforce continuing care contracts, a provision
36 shall advise the residents that any claims they may have under the
37 continuing care contract are subordinate to the rights of the secured
38 lender. For equity projects, the continuing care contract shall
39 specify the type and extent of the equity interest and whether any
40 entity holds a security interest.

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

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

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

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

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

23 (A) Any continuing care contract containing a clause that
24 provides for a continuing care contract to be terminated for “just
25 cause,” “good cause,” or other similar provision, shall also include
26 a provision that none of the following activities by the resident,
27 or on behalf of the resident, constitutes “just cause,” “good cause,”
28 or otherwise activates the termination provision:

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

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

33 (B) The provision required by this paragraph shall also state
34 that the provider shall not discriminate or retaliate in any manner
35 against any resident of a continuing care retirement community
36 for contacting the department, or any other state, county, or city
37 agency, or any elected or appointed government official to file a
38 complaint or for any other reason, or for participation in a residents’
39 organization or association.

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

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

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

10 (33) The policy or terms for refunding or repaying a lump sum
11 of any portion of the entrance fee, in the event of cancellation,
12 termination, or death. Every continuing care contract that provides
13 for a refund or repaying a lump sum of all or a part of the entrance
14 fee shall also do all of the following:

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

18 (B) State that if the continuing care contract is canceled or
19 terminated by the provider, the provider shall do both of the
20 following:

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

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

25 (C) State that the resident has a right to terminate his or her
26 contract after 18 months of residential temporary relocation, as
27 defined in paragraph (8) of subdivision (r) of Section 1771.
28 Provisions for refunds due to cancellation pursuant to this
29 subparagraph shall be set forth in the contract.

30 (D) State the provider shall make a good faith effort to reoccupy
31 or resell a unit for which a lump-sum payment is conditioned upon
32 resale of the unit. No later than July 1, 2016, a provider shall
33 provide notice to all current residents with contracts applicable to
34 this subparagraph regarding the statement required by this
35 subparagraph as a clarification of the resident’s existing contract.

36 (E) For a lump-sum payment, the provider shall state the average
37 and longest amount of time that a lump-sum payment has been
38 delayed.

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

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“NOTICE”

(date)

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

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

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

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

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

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

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

- 1 (4) Monthly care fees will not be changed based on the resident's
2 level of care or service.
- 3 (5) A resident who becomes financially unable to pay his or her
4 monthly care fees shall be subsidized provided the resident's
5 financial need does not arise from action by the resident to divest
6 the resident of his or her assets.
- 7 (c) Continuing care contracts may include provisions that do
8 any of the following:
 - 9 (1) Subsidize a resident who becomes financially unable to pay
10 for his or her monthly care fees at some future date. If a continuing
11 care contract provides for subsidizing a resident, it may also
12 provide for any of the following:
 - 13 (A) The resident shall apply for any public assistance or other
14 aid for which he or she is eligible and that the provider may apply
15 for assistance on behalf of the resident.
 - 16 (B) The provider's decision shall be final and conclusive
17 regarding any adjustments to be made or any action to be taken
18 regarding any charitable consideration extended to any of its
19 residents.
 - 20 (C) The provider is entitled to payment for the actual costs of
21 care out of any property acquired by the resident subsequent to
22 any adjustment extended to the resident under this paragraph, or
23 from any other property of the resident that the resident failed to
24 disclose.
 - 25 (D) The provider may pay the monthly premium of the resident's
26 health insurance coverage under Medicare to ensure that those
27 payments will be made.
 - 28 (E) The provider may receive an assignment from the resident
29 of the right to apply for and to receive the benefits, for and on
30 behalf of the resident.
 - 31 (F) The provider is not responsible for the costs of furnishing
32 the resident with any services, supplies, and medication, when
33 reimbursement is reasonably available from any governmental
34 agency, or any private insurance.
 - 35 (G) Any refund due to the resident at the termination of the
36 continuing care contract may be offset by any prior subsidy to the
37 resident by the provider.
 - 38 (2) Limit responsibility for costs associated with the treatment
39 or medication of an ailment or illness existing prior to the date of
40 admission. In these cases, the medical or surgical exceptions, as

1 disclosed by the medical entrance examination, shall be listed in
2 the continuing care contract or in a medical report attached to and
3 made a part of the continuing care contract.

4 (3) Identify legal remedies that may be available to the provider
5 if the resident makes any material misrepresentation or omission
6 pertaining to the resident's assets or health.

7 (4) Restrict transfer or assignments of the resident's rights and
8 privileges under a continuing care contract due to the personal
9 nature of the continuing care contract.

10 (5) Protect the provider's ability to waive a resident's breach
11 of the terms or provisions of the continuing care contract in specific
12 instances without relinquishing its right to insist upon full
13 compliance by the resident with all terms or provisions in the
14 contract.

15 (6) Provide that the resident shall reimburse the provider for
16 any uninsured loss or damage to the resident's unit, beyond normal
17 wear and tear, resulting from the resident's carelessness or
18 negligence.

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

24 (8) Provide for the subrogation to the provider of the resident's
25 rights in the case of injury to a resident caused by the acts or
26 omissions of a third party, or for the assignment of the resident's
27 recovery or benefits in this case to the provider, to the extent of
28 the value of the goods and services furnished by the provider to
29 or on behalf of the resident as a result of the injury.

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

33 (10) Require the resident's cooperation and assistance in the
34 diligent prosecution of any claim or action against any third party.

35 (11) Provide for the appointment of a conservator or guardian
36 by a court with jurisdiction in the event a resident becomes unable
37 to handle his or her personal or financial affairs.

38 (12) Allow a provider, whose property is tax exempt, to charge
39 the resident, on a pro rata basis, property taxes, or in-lieu taxes,
40 that the provider is required to pay.

1 (13) Make any other provision approved by the department.

2 (d) A copy of the resident’s rights as described in Section 1771.7
3 shall be attached to every continuing care contract.

4 (e) A copy of the current audited financial statement of the
5 provider shall be attached to every continuing care contract. For
6 a provider whose current audited financial statement does not
7 accurately reflect the financial ability of the provider to fulfill the
8 continuing care contract obligations, the financial statement
9 attached to the continuing care contract shall include all of the
10 following:

11 (1) A disclosure that the reserve requirement has not yet been
12 determined or met, and that entrance fees will not be held in
13 escrow.

14 (2) A disclosure that the ability to provide the services promised
15 in the continuing care contract will depend on successful
16 compliance with the approved financial plan.

17 (3) A copy of the approved financial plan for meeting the reserve
18 requirements.

19 (4) Any other supplemental statements or attachments necessary
20 to accurately represent the provider’s financial ability to fulfill its
21 continuing care contract obligations.

22 (f) A schedule of the average monthly care fees charged to
23 residents for each type of residential living unit for each of the five
24 years preceding execution of the continuing care contract shall be
25 attached to every continuing care contract. The provider shall
26 update this schedule annually at the end of each fiscal year. If the
27 continuing care retirement community has not been in existence
28 for five years, the information shall be provided for each of the
29 years the continuing care retirement community has been in
30 existence.

31 (g) If any continuing care contract provides for a health
32 insurance policy for the benefit of the resident, the provider shall
33 attach to the continuing care contract a binder complying with
34 Sections 382 and 382.5 of the Insurance Code.

35 (h) The provider shall attach to every continuing care contract
36 a completed form in duplicate, captioned “Notice of Cancellation.”
37 The notice shall be easily detachable, and shall contain, in at least
38 10-point boldface type, the following statement:

39
40 “NOTICE OF CANCELLATION” (date)

1 Your first date of occupancy under this contract
2 is: _____
3

4 “You may cancel this transaction, without any penalty within
5 90 calendar days from the above date.

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

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

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

19 Possession of the living unit must be made available to the
20 provider within 20 calendar days of your notice of cancellation.
21 If you fail to make the possession of any living unit available to
22 the provider, then you remain liable for performance of all
23 obligations under the contract.

24 To cancel this transaction, mail or deliver a signed and dated
25 copy of this cancellation notice, or any other written notice, or
26 send a telegram

27
28 to _____
29 (Name of provider)

30 at _____
31 (Address of provider’s place of business)

32 not later than midnight of _____ (date).

33 I hereby cancel this
34 transaction

35 _____
36 (Resident’s or
37 Transferor’s signature)”

38 SEC. 2. Section 1788.4 of the Health and Safety Code is
39 amended to read:

1 1788.4. (a) During the cancellation period, the provider shall
2 pay all refunds owed to a resident within 14 calendar days after a
3 resident makes possession of the living unit available to the
4 provider.

5 (b) After the cancellation period, any refunds due to a resident
6 under a continuing care contract shall be paid within 14 calendar
7 days after a resident makes possession of the living unit available
8 to the provider or 90 calendar days after death or receipt of notice
9 of termination, whichever is later.

10 (c) In nonequity projects, if the continuing care contract is
11 canceled by either party during the cancellation period or
12 terminated by the provider after the cancellation period, the resident
13 shall be refunded the difference between the total amount of
14 entrance, monthly, and optional fees paid and the amount used for
15 care of the resident.

16 (d) If a resident has paid additional amounts for upgrades,
17 special features, or modifications to the living unit and the provider
18 terminates the resident's continuing care contract, the provider
19 shall amortize those additional amounts at the same rate as the
20 entrance fee and shall refund the unamortized balance to the
21 resident.

22 (e) (1) A lump-sum payment to a resident after termination of
23 a continuing care contract that is conditioned upon resale of the
24 unit shall not be considered to be a refund and may not be
25 characterized or advertised as a refund. The full lump-sum payment
26 shall be paid to the resident within 14 calendar days after resale
27 of the unit. For contracts signed after January 1, 2016,
28 notwithstanding a provider's documented good-faith effort to resell
29 the unit, the resident is entitled to the repayment of ~~at least 20~~
30 ~~percent~~ *a specified portion, pursuant to subparagraphs (A) and*
31 *(B), of the full lump-sum payment if the unit remains vacant 120*
32 *days after the resident's termination. This repayment shall not*
33 *cause the contract in question to be deemed a refundable contract,*
34 *as defined in paragraph (2) of subdivision (r) of Section 1771.*

35 (A) *When a continuing care contract is terminated by the death*
36 *of a resident, at least 10 percent of the full lump-sum payment*
37 *shall be paid to the resident's estate within 120 days after the*
38 *resident's termination.*

39 (B) *When a continuing care contract is terminated for a reason*
40 *not described in subparagraph (A), at least 20 percent of the full*

1 *lump-sum payment shall be paid to the resident within 120 days*
2 *after the resident's termination.*

3 (2) Any payment balance that has not been paid to the resident
4 within 120 days shall accrue interest at a rate calculated pursuant
5 to paragraph (3). Any payment balance that has not been paid to
6 the resident within 180 days will accrue interest at a rate calculated
7 pursuant to paragraph (4). Interest shall continue to accrue until
8 the date the full lump-sum payment is paid to the resident. This
9 paragraph shall apply to existing and prospective continuing care
10 contracts.

11 (3) Any payments that are not paid to the resident within the
12 120-day period pursuant to paragraph (2) will accrue interest at a
13 rate no lower than the United States prime lending rate.

14 (4) Any payments that are not paid to the resident within the
15 180-day period pursuant to paragraph (2) will accrue interest at a
16 rate no lower than 2 percent plus the United States prime lending
17 rate.

18 (f) After the death of a resident, a lump-sum payment that is
19 conditioned upon resale of a unit shall be subject to subdivision
20 (e) and the payment and interest, if any, shall be payable to the
21 resident's estate.

22 (g) Except as otherwise obligated by an equity interest contract,
23 once the unit has been vacated and made available to the provider,
24 the provider shall not make any further charges to the resident or
25 his or her estate or charges against the lump-sum payment that is
26 due to the resident for purposes of continued monthly payments
27 to the provider or for maintenance or housekeeping on the vacated
28 unit.

29 (h) Nothing in this section shall be construed to limit or alter
30 any legal remedies otherwise available to a resident or his or her
31 estate.

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