

AMENDED IN ASSEMBLY SEPTEMBER 1, 2015

AMENDED IN ASSEMBLY AUGUST 20, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

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 1771, 1788, and 1788.4 of, and to add Section 1788.5 to, 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 provides that 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 a 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 a provider to pay a lump-sum payment that is conditioned upon resale of a unit to a resident within 14 days after resale of the unit.

This bill would require a continuing care retirement facility to pay the full lump-sum payment that is conditioned upon resale of a unit to a resident within 14 days after resale of a unit. The bill would require a continuing care retirement facility, for contracts signed after January 1, 2016, to pay a resident 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 a resident within ~~120~~ 180 days to accrue compound interest every 30 days at a rate not lower than 4% until the full lump-sum payment is made. The bill would require any payment balance not paid to a resident within ~~180~~ 240 days to accrue compound interest every 30 days at a rate not lower than 6% until the full lump-sum payment is made. The bill would require a facility to make the lump-sum payment to a resident's estate if the resident is deceased. The bill would provide that the repayment by a provider of all or a portion of an entrance fee before the resale of a unit would not subject any other entrance fee to the refund reserve requirements, except as provided.

The bill would authorize any resident whose contract calls for a lump-sum payment conditioned upon resale of a unit to file a complaint with the department if the unit has not been resold for more than 12 months after possession of the unit was made available to the provider. The bill would require the department, in response to the complaint, to perform an investigation, as specified, to determine whether the provider made a sufficient good faith effort to resell or reoccupy the unit. The bill would authorize a resident or a provider to submit a written request to the department for a formal review of the determination. The bill would require the provider to repay the full lump-sum payment owed to the resident within 20 business days of the department's final determination that the provider did not make a sufficient good faith effort to reoccupy or resell the unit, ~~and would require the provider to reimburse the department for reasonable costs associated with the investigation, as specified.~~ *unit.*

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 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: yes.
State-mandated local program: no.

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

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

1 complete information regarding the provider’s financial statements,
2 financial condition, and operation.

3 (b) (reserved)

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

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

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

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

15 (5) “Certificate” or “certificate of authority” means the
16 certificate issued by the department, properly executed and bearing
17 the State Seal, authorizing a specified provider to enter into one
18 or more continuing care contracts at a single specified continuing
19 care retirement community.

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

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

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

39 (9) “Continuing care promise” means a promise, expressed or
40 implied, by a provider to provide one or more elements of care to

1 an elderly resident for the duration of his or her life or for a term
2 in excess of one year. Any such promise or representation, whether
3 part of a continuing care contract, other agreement, or series of
4 agreements, or contained in any advertisement, brochure, or other
5 material, either written or oral, is a continuing care promise.

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

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

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

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

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

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

4 (5) “Depositor” means any prospective resident who pays a
5 deposit. Where any portion of the consideration transferred to an
6 applicant as a deposit or to a provider as consideration for a
7 continuing care contract is transferred by a person other than the
8 prospective resident or a resident, that third-party transferor shall
9 have the same cancellation or refund rights as the prospective
10 resident or resident for whose benefit the consideration was
11 transferred.

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

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

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

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

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

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

37 (6) “Equity project” means a continuing care retirement
38 community where residents receive an equity interest in the
39 continuing care retirement community property.

1 (7) “Equity securities” shall refer generally to large and
2 midcapitalization corporate stocks that are publicly traded and
3 readily liquidated for cash, and shall include shares in mutual funds
4 that hold portfolios consisting predominantly of these stocks and
5 other qualifying assets, as defined by Section 1792.2. Equity
6 securities shall also include other similar securities that are
7 specifically approved by the department.

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

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

16 (g) (reserved)

17 (h) (reserved)

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

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

21 (A) Direct obligations of the United States, including obligations
22 issued or held in book-entry form on the books of the United States
23 Department of the Treasury or obligations the timely payment of
24 the principal of, and the interest on, which are fully guaranteed by
25 the United States.

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

28 (i) The Federal Home Loan Bank System.

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

30 (iii) The Federal Financing Bank.

31 (iv) The Government National Mortgage Association.

32 (v) The Farmers Home Administration.

33 (vi) The Federal Home Loan Mortgage Corporation of the
34 Federal Housing Administration.

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

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

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

4 (E) Repurchase agreements fully secured by collateral security
5 described in subparagraph (A) or (B), as evidenced by an opinion
6 of counsel, if the collateral is held by the provider or a third party
7 during the term of the repurchase agreement, pursuant to the terms
8 of the agreement, subject to liens or claims of third parties, and
9 has a market value, which is determined at least every 14 days, at
10 least equal to the amount so invested.

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

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

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

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

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

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

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

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

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

22 (j) (reserved)

23 (k) (reserved)

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

37 (m) (1) “Monthly care fee” means the fee charged to a resident
38 in a continuing care contract on a monthly or other periodic basis
39 for current accommodations and ~~services~~ *services*, including care,

1 board, or lodging. Periodic entrance fee payments or other
2 prepayments shall not be monthly care fees.

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

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

8 (o) (reserved)

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

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

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

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

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

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

31 (7) “Processing fee” means a payment to cover administrative
32 costs of processing the application of a depositor or prospective
33 resident.

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

38 (9) “Proposes” means a representation that an applicant or
39 provider will or intends to make a future promise to provide care,
40 including a promise that is subject to a condition, such as the

1 construction of a continuing care retirement community or the
2 acquisition of a certificate of authority.

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

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

17 (q) (reserved)

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

20 (2) (A) “Refundable contract” means a continuing care contract
21 that includes a promise, expressed or implied, by the provider to
22 pay an entrance fee refund or to repurchase the transferor’s unit,
23 membership, stock, or other interest in the continuing care
24 retirement community when the promise to refund some or all of
25 the initial entrance fee extends beyond the resident’s sixth year of
26 residency. Providers that enter into refundable contracts shall be
27 subject to the refund reserve requirements of Section 1792.6.

28 (B) A continuing care contract that includes a promise to repay
29 all or a portion of an entrance fee that is conditioned upon
30 reoccupancy or resale of the unit previously occupied by the
31 resident shall not be considered a refundable contract for purposes
32 of the refund reserve requirements of Section 1792.6, provided
33 that this conditional promise of repayment is not referred to by the
34 applicant or provider as a “refund.” A provider may repay all or
35 a portion of an entrance fee that is conditioned upon resale of the
36 unit before the resale of the unit. The repayment of an entrance
37 fee before the resale of the unit shall not cause any other entrance
38 fee to be subject to the refund reserve requirements of Section
39 1792.6, provided that the provider does not promise, at the time
40 of contracting or thereafter, to make this type of early repayment,

1 represent that the provider intends to make this type of early
2 repayment, or indicate that the provider has a practice of making
3 this type of early repayment.

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

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

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

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

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

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

28 (s) (reserved)

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

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

39 (3) “Transferor” means a person who transfers, or promises to
40 transfer, consideration in exchange for care and related services

1 under a continuing care contract or proposed continuing care
2 contract, for the benefit of another. A transferor shall have the
3 same rights to cancel and obtain a refund as the depositor under
4 the deposit agreement or the resident under a continuing care
5 contract.

6 SEC. 2. Section 1788 of the Health and Safety Code is amended
7 to read:

8 1788. (a) A continuing care contract shall contain all of the
9 following:

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

- 1 (D) A planned activities program, which includes social and
2 recreational activities appropriate to the interests and capabilities
3 of the resident.
- 4 (E) Three balanced, nutritious meals and snacks made available
5 daily, including special diets prescribed by a physician as a medical
6 necessity.
- 7 (F) Assisted living services.
- 8 (G) Assistance with taking medications.
- 9 (H) Central storing and distribution of medications.
- 10 (I) Arrangements to meet health needs, including arranging
11 transportation.
- 12 (9) An itemization of the services that are included in the
13 monthly fee and the services that are available at an extra charge.
14 The provider shall attach a current fee schedule to the continuing
15 care contract. The schedule shall state that a provider is prohibited
16 from charging the resident or his or her estate a monthly fee once
17 a unit has been permanently vacated by the resident, unless the fee
18 is part of an equity interest contract.
- 19 (10) The procedures and conditions under which a resident may
20 be voluntarily and involuntarily transferred from a designated
21 living unit. The transfer procedures, at a minimum, shall include
22 provisions addressing all of the following circumstances under
23 which a transfer may be authorized:
- 24 (A) A continuing care retirement community may transfer a
25 resident under the following conditions, taking into account the
26 appropriateness and necessity of the transfer and the goal of
27 promoting resident independence:
- 28 (i) The resident is nonambulatory. The definition of
29 “nonambulatory,” as provided in Section 13131, shall either be
30 stated in full in the continuing care contract or be cited. If Section
31 13131 is cited, a copy of the statute shall be made available to the
32 resident, either as an attachment to the continuing care contract or
33 by specifying that it will be provided upon request. If a
34 nonambulatory resident occupies a room that has a fire clearance
35 for nonambulatory residents, transfer shall not be necessary.
- 36 (ii) The resident develops a physical or mental condition that
37 endangers the health, safety, or well-being of the resident or another
38 person.
- 39 (iii) The resident’s condition or needs require the resident’s
40 transfer to an assisted living care unit or skilled nursing facility,

1 because the level of care required by the resident exceeds that
2 which may be lawfully provided in the living unit.

3 (iv) The resident's condition or needs require the resident's
4 transfer to a nursing facility, hospital, or other facility, and the
5 provider has no facilities available to provide that level of care.

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

9 (i) Involve the resident and the resident's responsible person,
10 as defined in paragraph (6) of subdivision (r) of Section 87101 of
11 Title 22 of the California Code of Regulations, and upon the
12 resident's or responsible person's request, family members, or the
13 resident's physician or other appropriate health professional, in
14 the assessment process that forms the basis for the level of care
15 transfer decision by the provider. The provider shall offer an
16 explanation of the assessment process. If an assessment tool or
17 tools, including scoring and evaluating criteria, are used in the
18 determination of the appropriateness of the transfer, the provider
19 shall make copies of the completed assessment available upon the
20 request of the resident or the resident's responsible person.

21 (ii) Prior to sending a formal notification of transfer, the provider
22 shall conduct a care conference with the resident and the resident's
23 responsible person, and upon the resident's or responsible person's
24 request, family members, and the resident's health care
25 professionals, to explain the reasons for transfer.

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

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

32 (v) The notice of transfer shall be made at least 30 days before
33 the transfer is expected to occur, except when the health or safety
34 of the resident or other residents is in danger, or the transfer is
35 required by the resident's urgent medical needs. Under those
36 circumstances, the written notice shall be made as soon as
37 practicable before the transfer.

38 (vi) The written notice shall contain the reasons for the transfer,
39 the effective date, the designated level of care or location to which
40 the resident will be transferred, a statement of the resident's right

1 to a review of the transfer decision at a care conference, as provided
2 for in subparagraph (C), and for disputed transfer decisions, the
3 right to review by the Continuing Care Contracts Branch of the
4 State Department of Social Services, as provided for in
5 subparagraph (D). The notice shall also contain the name, address,
6 and telephone number of the department's Continuing Care
7 Contracts Branch.

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

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

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

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

32 (F) Transfer of a second resident when a shared accommodation
33 arrangement is terminated.

34 (11) Provisions describing any changes in the resident's monthly
35 fee and any changes in the entrance fee refund payable to the
36 resident that will occur if the resident transfers from any unit,
37 including, but not limited to, terminating his or her contract after
38 18 months of residential temporary relocation, as defined in
39 paragraph (8) of subdivision (r) of Section 1771. Unless the fee is
40 part of an equity interest contract, a provider is prohibited from

1 charging the resident or his or her estate a monthly fee once a unit
2 has been permanently vacated by the resident.

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

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

9 (14) The provider's obligations to provide services to the
10 resident while the resident is absent from the continuing care
11 retirement community.

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

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

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

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

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

29 (17) The amount of the entrance fee.

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

34 (19) The amount of any processing fee.

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

36 (21) For continuing care contracts that require a monthly care
37 fee or other periodic payment, the continuing care contract shall
38 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 (G) A statement that the provider is prohibited from charging
23 the resident or his or her estate a monthly fee once a unit has been
24 permanently vacated by the resident, unless the fee is part of an
25 equity interest contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (A) Any continuing care contract containing a clause that
5 provides for a continuing care contract to be terminated for “just
6 cause,” “good cause,” or other similar provision, shall also include
7 a provision that none of the following activities by the resident,
8 or on behalf of the resident, constitutes “just cause,” “good cause,”
9 or otherwise activates the termination provision:

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

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

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

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

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

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

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

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

38 (B) State that if the continuing care contract is canceled or
39 terminated by the provider, the provider shall do both of the
40 following:

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

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

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

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

16 (E) For all contracts with a repayment of all or a portion of the
17 entrance fee conditioned upon the resale of the unit, the provider
18 shall state the average and longest amount of time that it has taken
19 to resell a unit within the last five calendar years.

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

21
22 “NOTICE” (date)

23
24 “This is a continuing care contract as defined by paragraph (8)
25 of subdivision (c), or subdivision (l) of Section 1771 of the
26 California Health and Safety Code. This continuing care contract
27 form has been approved by the State Department of Social Services
28 as required by subdivision (b) of Section 1787 of the California
29 Health and Safety Code. The basis for this approval was a
30 determination that (provider name) has submitted a contract that
31 complies with the minimum statutory requirements applicable to
32 continuing care contracts. The department does not approve or
33 disapprove any of the financial or health care coverage provisions
34 in this contract. Approval by the department is NOT a guaranty
35 of performance or an endorsement of any continuing care contract
36 provisions. Prospective transferors and residents are strongly
37 encouraged to carefully consider the benefits and risks of this
38 continuing care contract and to seek financial and legal advice
39 before signing.”

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

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

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

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

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

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

23 (4) Monthly care fees will not be changed based on the resident’s
24 level of care or service.

25 (5) A resident who becomes financially unable to pay his or her
26 monthly care fees shall be subsidized provided the resident’s
27 financial need does not arise from action by the resident to divest
28 the resident of his or her assets.

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

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

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

38 (B) The provider’s decision shall be final and conclusive
39 regarding any adjustments to be made or any action to be taken

1 regarding any charitable consideration extended to any of its
2 residents.

3 (C) The provider is entitled to payment for the actual costs of
4 care out of any property acquired by the resident subsequent to
5 any adjustment extended to the resident under this paragraph, or
6 from any other property of the resident that the resident failed to
7 disclose.

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

11 (E) The provider may receive an assignment from the resident
12 of the right to apply for and to receive the benefits, for and on
13 behalf of the resident.

14 (F) The provider is not responsible for the costs of furnishing
15 the resident with any services, supplies, and medication, when
16 reimbursement is reasonably available from any governmental
17 agency, or any private insurance.

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

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

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

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

33 (5) Protect the provider's ability to waive a resident's breach
34 of the terms or provisions of the continuing care contract in specific
35 instances without relinquishing its right to insist upon full
36 compliance by the resident with all terms or provisions in the
37 contract.

38 (6) Provide that the resident shall reimburse the provider for
39 any uninsured loss or damage to the resident's unit, beyond normal

1 wear and tear, resulting from the resident's carelessness or
2 negligence.

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

8 (8) Provide for the subrogation to the provider of the resident's
9 rights in the case of injury to a resident caused by the acts or
10 omissions of a third party, or for the assignment of the resident's
11 recovery or benefits in this case to the provider, to the extent of
12 the value of the goods and services furnished by the provider to
13 or on behalf of the resident as a result of the injury.

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

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

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

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

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

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

28 (e) A copy of the current audited financial statement of the
29 provider shall be attached to every continuing care contract. For
30 a provider whose current audited financial statement does not
31 accurately reflect the financial ability of the provider to fulfill the
32 continuing care contract obligations, the financial statement
33 attached to the continuing care contract shall include all of the
34 following:

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

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

1 (3) A copy of the approved financial plan for meeting the reserve
2 requirements.

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

6 (f) A schedule of the average monthly care fees charged to
7 residents for each type of residential living unit for each of the five
8 years preceding execution of the continuing care contract shall be
9 attached to every continuing care contract. The provider shall
10 update this schedule annually at the end of each fiscal year. If the
11 continuing care retirement community has not been in existence
12 for five years, the information shall be provided for each of the
13 years the continuing care retirement community has been in
14 existence.

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

19 (h) The provider shall attach to every continuing care contract
20 a completed form in duplicate, captioned “Notice of Cancellation.”
21 The notice shall be easily detachable, and shall contain, in at least
22 10-point boldface type, the following statement:

23
24 “NOTICE OF CANCELLATION” (date)
25 Your first date of occupancy under this contract
26 is: _____
27

28 “You may cancel this transaction, without any penalty within
29 90 calendar days from the above date.

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

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

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

4 Possession of the living unit must be made available to the
5 provider within 20 calendar days of your notice of cancellation.
6 If you fail to make the possession of any living unit available to
7 the provider, then you remain liable for performance of all
8 obligations under the contract.

9 To cancel this transaction, mail or deliver a signed and dated
10 copy of this cancellation notice, or any other written notice, or
11 send a telegram

12
13 to _____
14 (Name of provider)

15 at _____
16 (Address of provider's place of business)

17 not later than midnight of _____ (date).

18 I hereby cancel this
19 transaction _____
20 (Resident's or
21 Transferor's signature)"

22

23 SEC. 3. Section 1788.4 of the Health and Safety Code is
24 amended to read:

25 1788.4. (a) During the cancellation period, the provider shall
26 pay all refunds owed to a resident within 14 calendar days after a
27 resident makes possession of the living unit available to the
28 provider.

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

34 (c) In nonequity projects, if the continuing care contract is
35 canceled by either party during the cancellation period or
36 terminated by the provider after the cancellation period, the resident
37 shall be refunded the difference between the total amount of
38 entrance, monthly, and optional fees paid and the amount used for
39 care of the resident.

1 (d) If a resident has paid additional amounts for upgrades,
2 special features, or modifications to the living unit and the provider
3 terminates the resident’s continuing care contract, the provider
4 shall amortize those additional amounts at the same rate as the
5 entrance fee and shall refund the unamortized balance to the
6 resident.

7 (e) (1) A lump-sum payment to a resident after termination of
8 a continuing care contract that is conditioned upon resale of the
9 unit shall not be considered to be a refund and may not be
10 characterized or advertised as a refund. The full lump-sum payment
11 shall be paid to the resident within 14 calendar days after resale
12 of the unit. For contracts signed after January 1, 2016,
13 notwithstanding a provider’s documented good-faith effort to resell
14 the unit, the resident is entitled to the repayment of a specified
15 portion, pursuant to subparagraphs (A) and (B), of the full
16 lump-sum payment if the unit remains vacant 120 days after the
17 resident’s termination. This repayment shall not cause the contract
18 in question to be deemed a refundable contract, as defined in
19 paragraph (2) of subdivision (r) of Section 1771.

20 (A) When a continuing care contract is terminated by the death
21 of a resident, at least 10 percent of the full lump-sum payment
22 shall be paid to the resident’s estate within 120 days after the
23 resident’s termination.

24 (B) When a continuing care contract is terminated for a reason
25 not described in subparagraph (A), at least 20 percent of the full
26 lump-sum payment shall be paid to the resident within 120 days
27 after the resident’s termination.

28 (2) Any payment balance that has not been paid to the resident
29 within ~~120~~ 180 days shall accrue interest at a rate calculated
30 pursuant to paragraph (3). Any payment balance that has not been
31 paid to the resident within ~~180~~ 240 days shall accrue interest at a
32 rate calculated pursuant to paragraph (4). Interest shall continue
33 to accrue until the date the full lump-sum payment is paid to the
34 resident. This paragraph shall apply only to continuing care
35 contracts entered into on or after January 1, 2016.

36 (3) Any payments that are not paid to the resident within the
37 ~~120-day~~ 180-day period pursuant to paragraph (2) shall accrue
38 compound interest every 30 days at a rate not lower than 4 percent.

1 (4) Any payments that are not paid to the resident within the
2 ~~180-day~~ 240-day period pursuant to paragraph (2) shall accrue
3 compound interest every 30 days at a rate not lower than 6 percent.

4 (f) After the death of a resident, a lump-sum payment that is
5 conditioned upon resale of a unit shall be subject to subdivision
6 (e) and the payment and interest, if any, shall be payable to the
7 resident’s estate.

8 (g) Except as otherwise obligated by an equity interest contract,
9 once the unit has been vacated and made available to the provider,
10 the provider shall not make any further charges to the resident or
11 his or her estate or charges against the lump-sum payment that is
12 due to the resident for purposes of continued monthly payments
13 to the provider or for maintenance or housekeeping on the vacated
14 unit.

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

18 SEC. 4. Section 1788.5 is added to the Health and Safety Code,
19 to read:

20 1788.5. (a) Any resident whose contract calls for a lump-sum
21 payment conditioned upon resale of a unit may file a complaint
22 with the department if the unit has not been resold for more than
23 twelve months after possession of the unit was made available to
24 the provider. A resident may file such a complaint regardless of
25 whether or not the contract includes a provision expressly requiring
26 a good faith effort to resell the unit.

27 (b) (1) In response to the complaint, the department shall
28 perform an investigation to determine whether the provider has
29 made a sufficient good faith effort to resell or reoccupy the unit.
30 At the department’s discretion, the investigation may include any
31 of the following:

32 (A) Inspections of the unit and the continuing care retirement
33 community.

34 (B) Interviews ~~of~~ with the provider, staff, and employees.

35 (C) Opinions and analysis from consultants.

36 (D) Written submissions from the resident or provider.

37 (E) A hearing.

38 (2) The department shall consider whether the provider has
39 adequately refurbished the unit for reletting, made necessary

1 repairs, reasonably marketed the unit to potential residents, and
2 shown the unit to prospective residents.

3 (c) Following the investigation, the department shall issue a
4 written determination, which includes a statement of the basis for
5 the determination.

6 (d) A resident, in the case of a determination of sufficient good
7 faith, or a provider, in the case of a determination of lack of
8 sufficient good faith, shall have the right to submit to the
9 department a written request for a formal review of the
10 determination within 20 business days after the department issues
11 the written determination. The party requesting review shall
12 provide all supporting documentation at that time. If no written
13 request for review is made, the department's determination shall
14 be considered final. If a written request for review is made, the
15 review shall be conducted by the deputy director of the Community
16 Care Licensing Division. If the department requires additional
17 information from the resident or provider, it shall be requested
18 within the first 30 business days after receiving the request for
19 review. The resident or provider shall provide this additional
20 information within 20 business days after it is requested by the
21 department. If the deputy director determines that the previous
22 determination was not made in accordance with applicable statutes
23 or regulations of the department, the department shall withdraw
24 its previous determination and issue a new determination. The
25 resident and provider shall be notified in writing of the deputy
26 director's decision within 40 business days from the time when
27 all necessary information has been received by the department.
28 The deputy director's decision is considered final and concludes
29 the administrative appeal rights of the resident and provider.

30 (e) If the department determines that the provider has not made
31 a sufficient good faith effort to reoccupy or resell the unit, the
32 provider shall repay the full lump-sum payment owed to the
33 resident within 20 business days after the department's
34 determination becomes final, and the provider shall reimburse the
35 department for reasonable costs associated with the investigation
36 of good faith within 20 business days after the department issues
37 a statement of costs. *final*. The department's final determination
38 and its factual findings, and any interim determination and factual

- 1 findings, shall be inadmissible in court or any other proceeding,
- 2 with the exception of any proceeding to enforce this subdivision.

O