

Introduced by Senator MonningFebruary 3, 2016

An act to amend Sections 1771, 1788, and 1788.4 of the Health and Safety Code, relating to continuing care contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 939, as introduced, 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 instead specify that a continuing care retirement facility 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, 2017, 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 180 days to accrue simple interest, to be compounded annually, at a rate of 4% until the full lump-sum payment is made. The bill would require any payment balance not paid to a resident within 240 days to accrue simple interest, to be compounded annually, at a rate of 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, until January 1, 2018, these provisions do not apply to specified projects that are in development prior to January 1, 2017, provided that the initial contract for the project is entered into on or before January 1, 2018. 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 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: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 1771 of the Health and Safety Code is
- 2 amended to read:
- 3 1771. Unless the context otherwise requires, the definitions in
- 4 this section govern the interpretation of this chapter.
- 5 (a) (1) “Affiliate” means any person, corporation, limited
- 6 liability company, business trust, trust, partnership, unincorporated
- 7 association, or other legal entity that directly or indirectly controls,
- 8 is controlled by, or is under common control with, a provider or
- 9 applicant.
- 10 (2) “Affinity group” means a grouping of entities sharing a
- 11 common interest, philosophy, or connection (e.g., military officers,
- 12 religion).

- 1 (3) “Annual report” means the report each provider is required
2 to file annually with the department, as described in Section 1790.
- 3 (4) “Applicant” means any entity, or combination of entities,
4 that submits and has pending an application to the department for
5 a permit to accept deposits and a certificate of authority.
- 6 (5) “Assisted living services” includes, but is not limited to,
7 assistance with personal activities of daily living, including
8 dressing, feeding, toileting, bathing, grooming, mobility, and
9 associated tasks, to help provide for and maintain physical and
10 psychosocial comfort.
- 11 (6) “Assisted living unit” means the living area or unit within
12 a continuing care retirement community that is specifically
13 designed to provide ongoing assisted living services.
- 14 (7) “Audited financial statement” means financial statements
15 prepared in accordance with generally accepted accounting
16 principles *principles*, including the opinion of an independent
17 certified public accountant, and notes to the financial statements
18 considered customary or necessary to provide full disclosure and
19 complete information regarding the provider’s financial statements,
20 financial condition, and operation.
- 21 (b) (reserved)
- 22 (c) (1) “Cancel” means to destroy the force and effect of an
23 agreement or continuing care contract.
- 24 (2) “Cancellation period” means the 90-day period, beginning
25 when the resident physically moves into the continuing care
26 retirement community, during which the resident may cancel the
27 continuing care contract, as provided in Section 1788.2.
- 28 (3) “Care” means nursing, medical, or other health-related
29 services, protection or supervision, assistance with the personal
30 activities of daily living, or any combination of those services.
- 31 (4) “Cash equivalent” means certificates of deposit and United
32 States treasury securities with a maturity of five years or less.
- 33 (5) “Certificate” or “certificate of authority” means the
34 certificate issued by the department, properly executed and bearing
35 the State Seal, authorizing a specified provider to enter into one
36 or more continuing care contracts at a single specified continuing
37 care retirement community.
- 38 (6) “Condition” means a restriction, specific action, or other
39 requirement imposed by the department for the initial or continuing
40 validity of a permit to accept deposits, a provisional certificate of

1 authority, or a certificate of authority. A condition may limit the
2 circumstances under which the provider may enter into any new
3 deposit agreement or contract, or may be imposed as a condition
4 precedent to the issuance of a permit to accept deposits, a
5 provisional certificate of authority, or a certificate of authority.

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

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

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

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

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

1 initiation or approval of policies that affect the continuing care
2 retirement community's operations, including, but not limited to,
3 approving budgets or the administrator for a continuing care
4 retirement community.

5 (d) (1) "Department" means the State Department of Social
6 Services.

7 (2) "Deposit" means any transfer of consideration, including a
8 promise to transfer money or property, made by a depositor to any
9 entity that promises or proposes to promise to provide continuing
10 care, but is not authorized to enter into a continuing care contract
11 with the potential depositor.

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

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

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

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

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

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

35 (3) "Entrance fee" means the sum of any initial, amortized, or
36 deferred transfer of consideration made or promised to be made
37 by, or on behalf of, a person entering into a continuing care contract
38 for the purpose of ensuring care or related services pursuant to that
39 continuing care contract or as full or partial payment for the
40 promise to provide care for the term of the continuing care contract.

1 Entrance fee includes the purchase price of a condominium,
2 cooperative, or other interest sold in connection with a promise of
3 continuing care. An initial, amortized, or deferred transfer of
4 consideration that is greater in value than 12 times the monthly
5 care fee shall be presumed to be an entrance fee.

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

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

13 (6) “Equity project” means a continuing care retirement
14 community where residents receive an equity interest in the
15 continuing care retirement community property.

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

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

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

31 (g) (reserved)

32 (h) (reserved)

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

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

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

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

1 the financial institution or the related guarantor of the financial
2 institution or shall provide for the investment securities to be fully
3 collateralized by investments described in subparagraph (A), and,
4 provided further, if so collateralized, that the provider has a
5 perfected first security lien on the collateral, as evidenced by an
6 opinion of counsel and the collateral is held by the provider.

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

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

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

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

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

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

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

33 (K) Bonds not listed on a national exchange that are traded on
34 an over-the-counter basis, and that are rated at least "Aa" by
35 Moody's Investors Service or "AA" by Standard and Poor's
36 Corporation or Fitch Investors Service.

37 (j) (reserved)

38 (k) (reserved)

39 (l) "Life care contract" means a continuing care contract that
40 includes a promise, expressed or implied, by a provider to provide

1 or pay for routine services at all levels of care, including acute
2 care and the services of physicians and surgeons, to the extent not
3 covered by other public or private insurance benefits, to a resident
4 for the duration of his or her life. Care shall be provided under a
5 life care contract in a continuing care retirement community having
6 a comprehensive continuum of care, including a skilled nursing
7 facility, under the ownership and supervision of the provider on
8 or adjacent to the premises. ~~No~~ A change ~~may~~ *shall not* be made
9 in the monthly fee based on level of care. A life care contract shall
10 also include provisions to subsidize residents who become
11 financially unable to pay their monthly care fees.

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

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

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

22 (o) (reserved)

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

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

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

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

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

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

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

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

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

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

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

31 (q) (reserved)

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

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

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

9 (B) *A continuing care contract that includes a promise to repay*
10 *all or a portion of an entrance fee that is conditioned upon*
11 *reoccupancy or resale of the unit previously occupied by the*
12 *resident shall not be considered a refundable contract for purposes*
13 *of the refund reserve requirements of Section 1792.6, provided*
14 *that this conditional promise of repayment is not referred to by*
15 *the applicant or provider as a “refund.” A provider may repay all*
16 *or a portion of an entrance fee that is conditioned upon resale of*
17 *the unit before the resale of the unit. The repayment of an entrance*
18 *fee before the resale of the unit shall not cause any other entrance*
19 *fee to be subject to the refund reserve requirements of Section*
20 *1792.6, provided that the provider does not promise, at the time*
21 *of contracting or thereafter, to make this type of early repayment,*
22 *represent that the provider intends to make this type of early*
23 *repayment, or indicate that the provider has a practice of making*
24 *this type of early repayment.*

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

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

30 (5) “Resident” means a person who enters into a continuing
31 care contract with a provider, or who is designated in a continuing
32 care contract to be a person being provided or to be provided
33 services, including care, board, or lodging.

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

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

39 (8) “Residential temporary relocation” means the relocation of
40 one or more residents, except in the case of a natural disaster that

1 is out of the provider’s control, from one or more residential living
2 units, assisted living units, skilled nursing units, or a wing, floor,
3 or entire continuing care retirement community building, due to a
4 change of use or major repairs or renovations. A residential
5 temporary relocation shall mean a relocation pursuant to this
6 subdivision that lasts for a period of at least ~~nine~~ 9 months but that
7 does not exceed 18 months without the written agreement of the
8 resident.

9 (s) (reserved)

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

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

20 (3) “Transferor” means a person who transfers, or promises to
21 transfer, consideration in exchange for care and related services
22 under a continuing care contract or proposed continuing care
23 contract, for the benefit of another. A transferor shall have the
24 same rights to cancel and obtain a refund as the depositor under
25 the deposit agreement or the resident under a continuing care
26 contract.

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

29 1788. (a) A continuing care contract shall contain all of the
30 following:

- 31 (1) The legal name and address of each provider.
- 32 (2) The name and address of the continuing care retirement
33 community.
- 34 (3) The resident’s name and the identity of the unit the resident
35 will occupy.
- 36 (4) If there is a transferor other than the resident, the transferor
37 shall be a party to the contract and the transferor’s name and
38 address shall be specified.
- 39 (5) If the provider has used the name of any charitable or
40 religious or nonprofit organization in its title before January 1,

1 1979, and continues to use that name, and that organization is not
2 responsible for the financial and contractual obligations of the
3 provider or the obligations specified in the continuing care contract,
4 the provider shall include in every continuing care contract a
5 conspicuous statement that clearly informs the resident that the
6 organization is not financially responsible.

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

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

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

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

18 (B) Safe and healthful living accommodations, including
19 housekeeping services and utilities.

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

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

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

27 (F) Assisted living services.

28 (G) Assistance with taking medications.

29 (H) Central storing and distribution of medications.

30 (I) Arrangements to meet health needs, including arranging
31 transportation.

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

39 (10) The procedures and conditions under which a resident may
40 be voluntarily and involuntarily transferred from a designated

1 living unit. The transfer procedures, at a minimum, shall include
2 provisions addressing all of the following circumstances under
3 which a transfer may be authorized:

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

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

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

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

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

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

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

- 1 (ii) Prior to sending a formal notification of transfer, the provider
2 shall conduct a care conference with the resident and the resident's
3 responsible person, and upon the resident's or responsible person's
4 request, family members, and the resident's health care
5 professionals, to explain the reasons for transfer.
- 6 (iii) Notify the resident and the resident's responsible person
7 of the reasons for the transfer in writing.
- 8 (iv) Notwithstanding any other provision of this subparagraph,
9 if the resident does not have impairment of cognitive abilities, the
10 resident may request that his or her responsible person not be
11 involved in the transfer process.
- 12 (v) The notice of transfer shall be made at least 30 days before
13 the transfer is expected to occur, except when the health or safety
14 of the resident or other residents is in danger, or the transfer is
15 required by the resident's urgent medical needs. Under those
16 circumstances, the written notice shall be made as soon as
17 practicable before the transfer.
- 18 (vi) The written notice shall contain the reasons for the transfer,
19 the effective date, the designated level of care or location to which
20 the resident will be transferred, a statement of the resident's right
21 to a review of the transfer decision at a care conference, as provided
22 for in subparagraph (C), and for disputed transfer decisions, the
23 right to review by the Continuing Care Contracts Branch of the
24 State Department of Social Services, as provided for in
25 subparagraph (D). The notice shall also contain the name, address,
26 and telephone number of the department's Continuing Care
27 Contracts Branch.
- 28 (vii) The continuing care retirement community shall provide
29 sufficient preparation and orientation to the resident to ensure a
30 safe and orderly transfer and to minimize trauma.
- 31 (C) The resident has the right to review the transfer decision at
32 a subsequent care conference that shall include the resident, the
33 resident's responsible person, and upon the resident's or
34 responsible person's request, family members, the resident's
35 physician or other appropriate health care professional, and
36 members of the provider's interdisciplinary team. The local
37 ombudsperson may also be included in the care conference, upon
38 the request of the resident, the resident's responsible person, or
39 the provider.

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

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

13 (F) Transfer of a second resident when a shared accommodation
14 arrangement is terminated.

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

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

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

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

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

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

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

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

7 (C) The failure to comply with this paragraph shall not affect
8 the validity of title to real property transferred pursuant to this
9 chapter.

10 (17) The amount of the entrance fee.

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

15 (19) The amount of any processing fee.

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

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

20 (A) A statement that the occupancy and use of the
21 accommodations by the resident is contingent upon the regular
22 payment of the fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (26) Notice that the living units are part of a continuing care
39 retirement community that is licensed as a residential care facility
40 for the elderly and, as a result, any duly authorized agent of the

1 department may, upon proper identification and upon stating the
2 purpose of his or her visit, enter and inspect the entire premises at
3 any time, without advance notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (B) State that if the continuing care contract is canceled or
16 terminated by the provider, the provider shall do both of the
17 following:

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

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

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

27 (D) *State the provider shall make a good-faith effort to reoccupy*
28 *or resell a unit for which a lump-sum payment is conditioned upon*
29 *resale of the unit. No later than July 1, 2017, a provider shall*
30 *provide notice to all current residents with contracts applicable*
31 *to this subparagraph regarding the statement required by this*
32 *subparagraph as a clarification of the resident’s existing contract.*

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

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

38

39

40

“NOTICE”

(date)

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

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

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

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

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

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

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

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

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

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

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

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

14 (B) The provider's decision shall be final and conclusive
15 regarding any adjustments to be made or any action to be taken
16 regarding any charitable consideration extended to any of its
17 residents.

18 (C) The provider is entitled to payment for the actual costs of
19 care out of any property acquired by the resident subsequent to
20 any adjustment extended to the resident under this paragraph, or
21 from any other property of the resident that the resident failed to
22 disclose.

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

26 (E) The provider may receive an assignment from the resident
27 of the right to apply for and to receive the benefits, for and on
28 behalf of the resident.

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

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

36 (2) Limit responsibility for costs associated with the treatment
37 or medication of an ailment or illness existing prior to the date of
38 admission. In these cases, the medical or surgical exceptions, as
39 disclosed by the medical entrance examination, shall be listed in

1 the continuing care contract or in a medical report attached to and
2 made a part of the continuing care contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38
39 “NOTICE OF CANCELLATION” (date)
40 Your first date of occupancy under this contract

1 is: _____

2

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

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

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

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

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

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

26

27 to _____

28 (Name of provider)

29 at _____

30 (Address of provider’s place of business)

31 not later than midnight of _____ (date).

32 I hereby cancel this

33 transaction

34

(Resident’s or
Transferor’s signature)”

35

36

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

39 1788.4. (a) During the cancellation period, the provider shall
40 pay all refunds owed to a resident within 14 calendar days after a

1 resident makes possession of the living unit available to the
2 provider.

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

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

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

20 (e) A lump-sum payment to a resident after termination of a
21 continuing care contract that is conditioned upon resale of ~~a~~ *the*
22 unit shall not be considered to be a refund and may not be
23 characterized or advertised as a refund. ~~The lump-sum full~~
24 *lump-sum* payment shall be paid to the resident within 14 calendar
25 days after resale of the unit.

26 (f) (1) *For contracts signed on and after January 1, 2017,*
27 *notwithstanding a provider's documented good-faith effort to resell*
28 *the unit, the resident is entitled to the repayment of a specified*
29 *portion, pursuant to subparagraphs (A) and (B), of the full*
30 *lump-sum payment if the unit remains vacant 120 days after the*
31 *resident's termination of the contract. This repayment shall not*
32 *cause the contract in question to be deemed a refundable contract,*
33 *as defined in paragraph (2) of subdivision (r) of Section 1771.*

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

38 (B) *When a continuing care contract is terminated for a reason*
39 *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 of the contract.*

3 *(2) Any payment balance that has not been paid to the resident*
4 *within 180 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 240 days shall accrue interest at a rate*
7 *calculated pursuant to paragraph (4). Interest shall continue to*
8 *accrue until the date the full lump-sum payment is paid to the*
9 *resident. This paragraph shall apply only to continuing care*
10 *contracts entered into on or after January 1, 2017.*

11 *(3) Any payments that are not paid to the resident within the*
12 *180-day period pursuant to paragraph (2) shall accrue simple*
13 *interest, to be compounded annually, at a rate of 4 percent.*

14 *(4) Any payments that are not paid to the resident within the*
15 *240-day period pursuant to paragraph (2) shall accrue simple*
16 *interest, to be compounded annually, at a rate of 6 percent.*

17 *(5) Until January 1, 2018, this subdivision shall not apply to a*
18 *project that is in development prior to January 1, 2017, including*
19 *current repayable agreements, current deposit agreements that*
20 *contemplate repayable entrance fees, and other projects that have*
21 *received department approval to market units pursuant to Section*
22 *1771.4, or have received issuer, lender, or bond insurer approval*
23 *to obtain bond financing, or other governmental approval based*
24 *on a repayable entrance fee option, if the initial contract for the*
25 *project is entered into on or before January 1, 2018.*

26 *(g) (1) After the death of a resident, a lump-sum payment that*
27 *is conditioned upon resale of a unit shall be subject to subdivision*
28 *(f) and the payment and interest, if any, shall be payable to the*
29 *resident's estate.*

30 *(2) Until January 1, 2018, this subdivision shall not apply to a*
31 *project that is in development prior to January 1, 2017, including*
32 *current repayable agreements, current deposit agreements that*
33 *contemplate repayable entrance fees, and other projects that have*
34 *received department approval to market units pursuant to Section*
35 *1771.4, or have received issuer, lender, or bond insurer approval*
36 *to obtain bond financing, or other governmental approval based*
37 *on a repayable entrance fee option, if the initial contract for the*
38 *project is entered into on or before January 1, 2018.*

39 *(h) Except as otherwise obligated by an equity interest contract,*
40 *once the unit has been vacated and made available to the provider,*

1 *the provider shall not make any further charges to the resident or*
2 *his or her estate or charges against the lump-sum payment that is*
3 *due to the resident for purposes of continued monthly payments*
4 *to the provider or for maintenance or housekeeping on the vacated*
5 *unit.*

6 (i) *Nothing in this section shall be construed to limit or alter*
7 *any legal remedies otherwise available to a resident or his or her*
8 *estate.*

O