

AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 827**

**Introduced by Assembly Member Speier**

February 22, 1995

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~~An act to amend Sections 1772, 1780.4, and 1788 of, and to add Sections 1771.5 and 1788.1 to, the Health and Safety Code, An act to amend Sections 1770, 1771, 1771.2, 1771.4, 1771.6, 1771.8, 1772, 1773, 1775, 1776.2, 1777, 1777.2, 1777.4, 1778, 1779, 1779.2, 1779.4, 1779.6, 1779.8, 1779.10, 1780, 1780.2, 1780.4, 1781, 1781.2, 1781.4, 1781.8, 1782, 1783, 1783.2, 1784, 1785, 1786, 1786.2, 1787, 1788, 1788.2, 1788.4, 1789.2, 1789.4, 1789.6, 1789.8, 1790, 1791, 1792, 1792.2, and 1793 of, to amend and renumber Sections 1793.5, 1793.6, 1793.7, 1793.9, 1793.11, 1793.13, 1793.15, 1793.17, 1793.19, 1793.21, 1793.23, 1793.25, 1793.27, 1793.29, 1793.31, 1793.50, 1793.52, 1793.54, 1793.56, 1793.58, 1793.60, and 1793.62 of, to add Sections 1771.5 and 1794.6 to, and to repeal Section 1788.3 of, the Health and Safety Code, relating to continuing care contracts, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 827, as amended, Speier. Continuing care contracts.

Under existing law, the State Department of Social Services is responsible for regulating activity relating to continuing care contracts that are defined to include promises to provide care to an elderly resident for the duration of his or her life or



for a period in excess of 1 year in exchange for certain charges or fees.

Existing law prohibits continuing care providers from entering continuing care contracts without a current and valid provisional or final certificate of authority issued by the department and prohibits these providers from entering into deposit subscription agreements without a current and valid permit from the state department. Existing law restricts the information that may be included by continuing care providers in their advertising or other printed materials. Existing law requires the inclusion of certain provisions in all continuing care deposit subscription agreements and continuing care contracts.

~~The bill would require every nonprofit continuing care provider or facility to have a resident on its board of directors and would make failure to comply with this requirement grounds for suspension of the permit and certificate of authority of the provider or facility. The bill would revise certain of the requirements relating to information that may be included in continuing care advertising and other printed materials and would require the inclusion of additional fee information in deposit subscription agreements and continuing care contracts.~~

~~The bill would also require the continuing care provider to, within 30 days of the date of execution of a continuing care contract, submit to the resident copies of all applicable policies of insurance.~~

*This bill, among other things, would revise the provisions regarding continuing care contracts, and would require the continuing care retirement communities to maintain an environment that enhances residents independence and self-determination and in that regard would impose various requirements on the provider. The bill would revise some of the purposes for which the funds in the continuously appropriated Continuing Care Provider Fee Fund may be expended and would increase the amounts deposited into fund, thereby making an appropriation. It would revise the requirement for application for a permit to sell deposit subscriptions and for a certificate of authority.*



*The bill would also authorize the department to charge applicants a fee if there is any material change in their application for a permit to sell deposit subscriptions and a certificate of authority. It would revise the requirements for the monthly progress reports required to be filed under existing law regarding the escrow accounts opened for deposit subscriptions. The bill would establish procedures and requirements for the department to issue a provisional certificate of authority to a provider. It would require certain services to be listed in the continuing care contract and to be made available to the residents, and would list prescribed documents to be attached to each continuing care contract.*

*The bill would revise certain requirements regarding annual reporting by providers of their financial condition, and the conditions for exemption from that requirement. As to those providers who offer a refundable contract, it would restrict the type of investments to be made with the money held in trust for the contractholders, and set forth procedures for determining the amount of money to be held in trust for each resident who is a party to a refundable continuing care contract.*

*The bill would provide that any entity that abandons the continuing care retirement community or its obligations under a continuing care contract is guilty of a misdemeanor, thereby imposing a state-mandated local program by changing the definition of a crime.*

*The bill would also recast the grounds for, and establish grounds for, suspending, revoking, or conditioning a permit to sell deposit subscriptions, a provisional certificate of authority, or a certificate of authority.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

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

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

1 ~~SECTION 1. Section 1771.5 is added to the Health and~~  
2 *SECTION 1. Section 1770 of the Health and Safety*  
3 *Code is amended to read:*

4 1770. The Legislature finds, declares, and intends all  
5 of the following:

6 (a) Continuing care retirement communities are an  
7 alternative for the long-term residential, social, and  
8 health care needs of California’s elderly residents, seek to  
9 provide a continuum of care, minimize transfer trauma,  
10 and allow for provision of services in an appropriately  
11 licensed setting.

12 (b) Because elderly residents often expend a  
13 significant portion of their savings in order to purchase  
14 care in the retirement community and, thereby, expect  
15 to receive care at the retirement community for the rest  
16 of their lives, tragic consequences can result from a  
17 continuing care provider becoming insolvent or unable  
18 to provide responsible care.

19 (c) There is a need for disclosure concerning the terms  
20 of agreements made between prospective residents and  
21 the continuing care provider, and concerning the  
22 operations of the ~~facility~~ *continuing care retirement*  
23 *community*.

24 (d) Providers of continuing care should obtain a  
25 certificate of authority to ~~sell~~ *enter into* continuing care  
26 contracts and be monitored and regulated by the State  
27 Department of Social Services.

28 (e) This chapter applies equally to for-profit and  
29 nonprofit provider entities.

30 (f) This chapter shall be the minimum requirement to  
31 be imposed upon any entity offering or providing  
32 continuing care, as set forth in this chapter.

33 (g) Because the authority to enter into continuing  
34 care contracts granted by the State Department of Social  
35 Services is neither a guarantee of performance by the  
36 providers nor an endorsement of contract provisions,  
37 prospective residents must carefully consider the risks,  
38 benefits, and costs before signing a continuing care



1 contract and should be encouraged to seek financial and  
2 legal advice before doing so.

3 *SEC. 2. Section 1771 of the Health and Safety Code is*  
4 *amended to read:*

5 1771. Unless the context otherwise requires, the  
6 definitions in this section govern the ~~construction~~  
7 *interpretation* of this chapter.

8 (a) (1) “Affinity group” means a grouping of  
9 individuals sharing a common interest, philosophy, or  
10 historical connection through employment or ancestral  
11 backgrounds (e.g., military officers, religion, etc.).

12 (2) “Annual report” means audited financial  
13 statements and reserve calculations (as required by  
14 Sections 1792.2 and 1793), with an accompanying  
15 certified public accountant’s ~~opinion~~ *thereof opinions*  
16 ~~thereon, reserve calculations, resident listing list,~~  
17 evidence of ~~surety~~ *fidelity continuing care* bond, and  
18 certification that the contract in use for new residents has  
19 been approved by the department, all *to be* submitted to  
20 the department by each provider annually, *as required by*  
21 *Section 1790.*

22 ~~(b)~~

23 (3) “Applicant” means any entity that submits an  
24 application to the department for a permit to sell deposit  
25 subscriptions and certificate of authority.

26 ~~(c) “Basic services” means the following services,~~  
27 ~~which are required to be provided to the residents, as~~  
28 ~~necessary or appropriate, in order to obtain and maintain~~  
29 ~~a license as a residential care facility for the elderly:~~

30 ~~(1) Regular observation of the resident’s physical and~~  
31 ~~mental condition.~~

32 ~~(2) Safe and healthful living accommodations,~~  
33 ~~including housekeeping services and utilities.~~

34 ~~(3) Maintenance of house rules for the protection of~~  
35 ~~residents.~~

36 ~~(4) A planned activities program, which includes~~  
37 ~~social and recreational activities appropriate to the~~  
38 ~~interests and capabilities of the residents.~~

39 ~~(5) Supervision of residents’ schedules and activities.~~



1 ~~(6) Three balanced, nutritious meals and snacks made~~  
2 ~~available daily, including special diets prescribed by a~~  
3 ~~physician and surgeon as a medical necessity.~~

4 ~~(7) Monitoring food intake or special diets.~~

5 ~~(8) Personal assistance and care in activities of daily~~  
6 ~~living, such as dressing, grooming, bathing, and other~~  
7 ~~personal hygiene.~~

8 ~~(9) Assistance with taking medication.~~

9 ~~(10) Central storing and distribution of medications.~~

10 ~~(11) Arrangements to meet health needs, including~~  
11 ~~arranging transportation.~~

12 ~~(d)~~

13 ~~(b) [reserved]~~

14 ~~(c) (1) “Cancellation” means to destroy the force and~~  
15 ~~effectiveness effect of an agreement or *continuing care*~~  
16 ~~contract, by making or declaring it void or invalid.~~

17 ~~(e)~~

18 ~~(2) “Cancellation period” means the 90-day period,~~  
19 ~~beginning when the transferor receives a signed copy of~~  
20 ~~*signs* the continuing care contract, during which time the~~  
21 ~~resident or transferor may rescind the *continuing care*~~  
22 ~~contract.~~

23 ~~(f)~~

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

28 ~~(g)~~

29 ~~(4) “Certificate” or “certificate of authority” means~~  
30 ~~the written authorization from the department for a~~  
31 ~~specified provider to enter into one or more continuing~~  
32 ~~care contracts at a single specified ~~facility~~ *continuing care*~~  
33 ~~*retirement community*.~~

34 ~~(h) “Committee” means the Committee on~~  
35 ~~Continuing Care Contracts of the State Department of~~  
36 ~~Social Services.~~

37 ~~(i)~~

38 ~~(5) “Condition” means a restriction or required action~~  
39 ~~placed on a provisional or final certificate of authority by~~  
40 ~~the department. A condition may limit the circumstances~~



1 *under which the provider may enter into any new*  
2 *contract, or may be a condition precedent to the issuance*  
3 *of a final certificate of authority.*

4 (6) “Consideration” means some right, interest, profit,  
5 or benefit accruing to one party, or some forbearance,  
6 detriment, loss, or responsibility, given, suffered, or  
7 undertaken by the other.

8 ~~(j)~~

9 (7) “Continuing care contract” means a written  
10 contract, which includes a promise, *expressed or implied*,  
11 by a provider to provide one or more elements of care to  
12 an elderly resident for the duration of his or her life or for  
13 a term in excess of one year, in exchange for the payment  
14 of an entrance fee, or payment of periodic charges, or  
15 both types of payments. A continuing care contract may  
16 consist of one or a series of agreements and may have  
17 other writings incorporated by reference. A ~~continuing~~  
18 ~~care contract includes a life care contract, as defined in~~  
19 *paragraph (1) of subdivision ~~(w)~~ (l) is a type of*  
20 *continuing care contract.*

21 (8) “Continuing care contract committee” means an  
22 advisory panel appointed pursuant to Section 1777.

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

33 (10) “Control” means the power to direct or cause the  
34 direction of the management and policies of an operator  
35 of a continuing care retirement community, whether  
36 through the ownership of voting securities, by contract or  
37 otherwise. A parent or sole corporate member of a  
38 corporation may exhibit control of the operator of the  
39 continuing care retirement community through direct  
40 participation in the initiation or approval of policies



1 *directly affecting the operations, including, but not*  
 2 *limited to, approval of budgets or approval of the*  
 3 *continuing care retirement community administrator.*

4 ~~(k) “Contract” means a continuing care contract.~~

5 ~~(l)~~

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

8 ~~(m)~~

9 (2) “Deposit subscription” means ~~the installment~~  
 10 ~~payment~~ *cash or cash equivalent payment* made by a  
 11 subscriber to an applicant *and the escrow agent prior to*  
 12 *the release of escrow* during development or  
 13 construction of a ~~facility~~ *continuing care retirement*  
 14 *community. For the purpose of this section and Section*  
 15 *1780.2, “cash equivalent” means certificates of deposit*  
 16 *and United States Treasury securities with a maturity of*  
 17 *five years or less. Possession and control of any such*  
 18 *instrument must be transferred to the escrow agent or*  
 19 *depository at the time the deposit is paid.*

20 ~~(n)~~

21 (3) “Deposit subscription agreement” means a  
 22 *written contract in compliance with Section 1780.4*  
 23 *entered into between the transferor and applicant. This*  
 24 *agreement allows an applicant to accept deposit*  
 25 *subscriptions prior to the issuance of a provisional*  
 26 *certificate of authority.*

27 (4) “Depository” means a bank or institution that is a  
 28 *member of the Federal Deposit Insurance Corporation or*  
 29 *a comparable title insurance program. The department’s*  
 30 *approval of the depository will be based, in part, upon its*  
 31 *capability to ensure the safety of funds and properties*  
 32 *entrusted to it and capable and willing to perform the*  
 33 *obligations of the depository pursuant to the escrow*  
 34 *agreement and this chapter. The depository may be the*  
 35 *same entity as the escrow agent.*

36 (5) “Director” means the Director of the State  
 37 Department of Social Services.

38 ~~(o)~~

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



1 ~~(p)~~

2 (2) "Entity" means an organization or being that  
3 possesses separate existence for tax purposes. Entity  
4 includes person, sole proprietorship, estate, trust,  
5 association, joint venture, partnership, and corporation.

6 ~~(q)~~

7 (3) "Entrance fee" means an initial or deferred  
8 transfer of consideration made or promised to be made by  
9 a person entering into a continuing care contract, for the  
10 purpose of assuring care or related services pursuant to  
11 that *continuing care* contract or as full or partial payment  
12 for the promise to provide ~~a facility~~ *one or more elements*  
13 *of care for the term of the continuing care contract. An*  
14 *entrance fee includes the purchase price of a*  
15 *condominium, cooperative, or other interest sold in*  
16 *connection with a promise of continuing care. The*  
17 *entrance fee may include a previously paid deposit*  
18 ~~subscriptions~~ *subscription, which are is credited to the*  
19 *total entrance fee due at the time of the parties signing*  
20 *transferor signs the continuing care contracts to the total*  
21 ~~entrance fee due contract. An entrance fee that is greater~~  
22 *than 12 times the monthly fee shall be presumed to imply*  
23 *a promise to provide care for more than one year. The*  
24 term "accommodation fee" may be synonymously used to  
25 mean an entrance fee.

26 ~~(r)~~

27 (4) "Equity" means the residual value of a business or  
28 property beyond any mortgage or deed of trust thereon  
29 and liability therein.

30 ~~(s)~~

31 (5) "Equity project" means a continuing care  
32 development project wherein the ~~residents~~ *transferors*  
33 are given an equity interest in the ~~facility~~ *continuing care*  
34 *retirement community* property or in a membership in  
35 a ~~residence~~ *resident's* association.

36 ~~(t)~~

37 (6) "Escrow agent" means ~~any of the following entities~~  
38 *a bank or institution, including, but not limited to, a title*  
39 *insurance company, approved* by the director as capable  
40 of ensuring the safety of the funds and properties



1 entrusted to it and capable and willing to perform the  
 2 terms of the escrow pursuant to the escrow agreement  
 3 and the provisions of this chapter. *The escrow agent may*  
 4 *be the same entity as the depository. If the escrow agent*  
 5 *is a title company it shall meet the following*  
 6 *requirements:*

7 (A) *A Standard and Poors rating of “A” or better or a*  
 8 *comparable rating from a comparable rating service.*

9 (B) *Licensure in good standing with the Department*  
 10 *of Insurance.*

11 (C) *Tangible net equity as required by the*  
 12 *Department of Insurance.*

13 (D) *Reserves as required by the Department of*  
 14 *Insurance.*

15 (1) A bank which is a member of the Federal Deposit  
 16 Insurance Corporation.

17 (2) A savings and loan association which is a member  
 18 of the Federal Deposit Insurance Corporation.

19 ~~(u)~~

20 (f) (1) “Facility” means any place or accommodation  
 21 in which a provider undertakes to provide a resident with  
 22 care or related services ~~pursuant to a continuing care~~  
 23 ~~contract~~, whether or not the place or accommodation is  
 24 constructed, owned, leased, rented, or otherwise  
 25 contracted for by the provider. ~~For the purposes of~~  
 26 ~~meeting the enrollment criteria of this chapter, a distinct~~  
 27 ~~phase of development may be considered to be the~~  
 28 ~~facility when a project is being developed in successive~~  
 29 ~~multiple phases over a period of time.~~

30 ~~(v) “Installment payment” means one of several~~  
 31 ~~successive payments made at previously agreed upon~~  
 32 ~~intervals toward the settlement of a debt.~~

33 ~~(w)~~

34 (g) [reserved]

35 (h) [reserved]

36 (i) “Inactive certificate of authority” means a  
 37 certificate which has been declared inactive under  
 38 Section 1794.6 and renders its holder no longer  
 39 authorized to enter into continuing care contracts, but

1 *still contractually obligated to continuing care residents*  
2 *and statutory compliance requirements.*

3 (j) *[reserved]*

4 (k) *[reserved]*

5 (l) (1) “Life care contract” means a continuing care  
6 contract which includes a promise, *expressed or implied*,  
7 by a provider to provide *routine services at all levels of*  
8 *care*; including acute care and physicians and surgeons’  
9 services, to a resident for the duration of his or her life.  
10 Care shall be provided in a ~~facility~~ *continuing care*  
11 *retirement community* having a comprehensive  
12 continuum of care, including a skilled nursing facility,  
13 under the ownership and supervision of the provider on,  
14 or adjacent to, the premises. In a life care contract, no  
15 change is made in the monthly fee based on level of  
16 service. A life care contract shall also include provisions  
17 to subsidize residents who become financially unable to  
18 pay their monthly care fees.

19 ~~(x)~~

20 (2) “Life lease” means a landlord-tenant relationship  
21 wherein the tenant obtains only the right to possess a  
22 defined living unit for life. In a life lease there is no  
23 obligation, or intent, to provide care and services to the  
24 tenant at any time, present or future.

25 ~~(y) “Limit” and “limitation” means a restriction on~~  
26 ~~any activity related to a provisional or final certificate of~~  
27 ~~authority, which prohibits the provider from entering~~  
28 ~~into any new contract.~~

29 ~~(z) “Living unit” means a specifically identified~~  
30 ~~apartment, room, or other area within a facility.~~

31 ~~(aa) “Market test unit” means a living unit of a facility~~  
32 ~~which is not used exclusively for personal care or nursing~~  
33 ~~services.~~

34 ~~(bb)~~

35 (m) (1) “Membership” means a body, class, or group  
36 of individuals admitted to the responsibilities and  
37 privileges of the collective whole and typically requiring  
38 payment of dues, adherence to a program, or compliance  
39 with some other requirements of the group.

40 ~~(ee)~~



1 (2) “Monthly care fee” means the monthly charge to  
 2 a resident for accommodations and services rendered  
 3 ~~pursuant to a continuing care contract, exclusive of~~  
 4 ~~entrance fees or other prepayments,~~ including care,  
 5 board, or lodging, and any other periodic charges to the  
 6 resident, determined on a monthly or other recurring  
 7 basis, pursuant to the provisions of a *continuing care*  
 8 contract. *Monthly care fees are exclusive of periodic*  
 9 *entrance fee payments or other prepayments.*

10 ~~(dd)~~

11 (3) “Monthly fee contract” means a continuing care  
 12 contract that provides by its terms for the monthly  
 13 payment of a fee for accommodations and services  
 14 rendered.

15 ~~(ee)~~

16 (n) (1) “Nonambulatory person” means a person who  
 17 is unable to leave a building unassisted under emergency  
 18 conditions, as required by Section 13131.

19 ~~(ff)~~

20 (o) [reserved]

21 (p) (1) “Per capita cost” means a ~~facility’s~~ *continuing*  
 22 *care retirement community’s* operating expenses,  
 23 *excluding depreciation,* divided by the average number  
 24 of residents. ~~Depreciation is excluded when computing~~  
 25 ~~cash per capita cost for calculating reserve requirements.~~

26 ~~(gg)~~

27 (2) “Permit to sell deposit subscriptions” means a  
 28 written authorization by the department for an applicant  
 29 to enter into one or more deposit subscription  
 30 agreements at a single specified ~~facility~~ *location.*

31 ~~(hh)~~

32 (3) “Personal care” means assistance with personal  
 33 activities of daily living, including dressing, feeding,  
 34 toileting, bathing, grooming, mobility, and associated  
 35 tasks, to help provide for and maintain physical and  
 36 psychosocial comfort.

37 ~~(ii)~~

38 (4) “Personal care unit” means a living unit within a  
 39 physical area of a ~~facility~~ *continuing care retirement*  
 40 *community* specifically designed to provide ongoing



1 personal care. *A personal care unit is synonymous with an*  
2 *assisted living unit.*

3 ~~(jj)~~

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

7 ~~(kk)~~

8 (6) “Processing fee” means ~~an advance~~ payment by  
9 the transferor to cover administrative costs of processing  
10 the application of a subscriber or prospective resident.

11 ~~(ll)~~

12 (7) “Promise to provide care” means any *expressed or*  
13 *implied* representation ~~made by one or more than one~~  
14 ~~entity~~ that care will be provided or will be available, *such*  
15 *as by preferred access*, whether the representation is part  
16 of a continuing care contract, other agreement, or series  
17 of agreements, or contained in any advertisement,  
18 brochure, or other material, either written or oral.

19 ~~(mm)~~

20 (8) “Proposes” means a representation that an  
21 applicant or provider plans to make a future promise to  
22 provide care, which may be subject to the happening of  
23 certain events, such as ~~facility~~ *continuing care retirement*  
24 *community* construction or obtaining a certificate of  
25 authority.

26 ~~(nn)~~

27 (9) “Provider” means an entity which provides,  
28 promises to provide, or proposes to promise to provide,  
29 care for life or for more than one year, ~~and has obtained~~  
30 ~~a provisional or final certificate of authority.~~ *A provider*  
31 *shall include any entity that controls the entity that*  
32 *promises care as determined by the department.*

33 Homeowner’s associations, cooperatives, or  
34 condominium associations ~~cannot~~ *shall not* be ~~solely~~  
35 ~~responsible for fulfilling the obligations of any continuing~~  
36 ~~care contract providers.~~

37 (10) “Provisional certificate of authority” means  
38 *written authorization by the department that allows the*  
39 *provider to enter into continuing care contracts. This*  
40 *provisional certificate is issued after the conditions*



1 *defined in Section 1786 have been met and is issued for*  
2 *a term defined under subdivision (b) of Section 1786.*

3 ~~(q) [reserved]~~

4 *(r) (1) “Refundable reserve” means the amount*  
5 *calculated to ensure the availability of funds for specified*  
6 *refunds of entrance fees.*

7 ~~(oo)~~

8 *(2) “Refundable contract” means a proposed—*  
9 ~~*or*~~ ~~*current*~~ *continuing care contract form that includes*  
10 *promises, expressed or implied, to pay refunds of*  
11 *entrance fees or to repurchase the transferor’s unit,*  
12 *membership, stock, or other interest in the project—*  
13 ~~*or*~~ ~~*facility, after the end of the trial residence period, in the*~~  
14 ~~*event of voluntary termination by the transferor or*~~  
15 ~~*resident,*~~ *continuing care retirement community when*  
16 *the specified refund right is not fully amortized within*  
17 ~~*the first six years by the end of the sixth year of residency;*~~  
18 ~~*or in the event a provider terminates a resident.*~~

19 ~~(pp) “Refund reserve” means the amount calculated~~  
20 ~~*and deposited in a special trust fund to ensure the*~~  
21 ~~*availability of funds for specified refunds of entrance fees.*~~

22 ~~(qq)~~

23 *(3) “Reservation fee” means cash received by an*  
24 *applicant from an interested individual during a market*  
25 *test feasibility study, which complies with subdivision (b)*  
26 *of Section 1771.6.*

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

32 ~~(rr)~~

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

35 *(6) “Residential living unit” means a living unit in a*  
36 *continuing care retirement community which is included*  
37 *in the residential care facility for the elderly license*  
38 *capacity, but not used exclusively for personal care or*  
39 *nursing services.*



1 (s) “Subscriber” means a person who has applied to be  
2 a resident, in a ~~facility~~ *continuing care retirement*  
3 *community* under development or construction, and who  
4 has entered into a deposit subscription agreement.

5 ~~(ss)~~

6 (t) (1) “Termination” means the ending of a  
7 *continuing care* contract ~~without as provided for in the~~  
8 terms of the *continuing care* contract ~~being broken by~~  
9 ~~either side.~~

10 ~~(tt)~~

11 (2) “Transfer” means conveyance of a right, title, or  
12 interest.

13 ~~(uu)~~

14 (3) “Transfer fee” means a levy *by the provider*  
15 against the proceeds from the sale of a transferor’s equity  
16 interest.

17 ~~(vv)~~

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

27 ~~(ww)~~

28 (5) “Transferor” means a person who transfers or  
29 promises to transfer a sum of money or property for the  
30 purpose of assuring care or related services pursuant to a  
31 continuing care contract, whether for the benefit of the  
32 transferor or another.

33 *SEC. 3. Section 1771.2 of the Health and Safety Code*  
34 *is amended to read:*

35 1771.2. (a) No entity proposing to promise to provide  
36 care shall enter into a deposit subscription agreement or  
37 sell a deposit subscription unless the entity has *applied for*  
38 *and received* a current and valid permit to sell deposit  
39 subscriptions.



1 (b) No continuing care contract shall be executed,  
2 unless the provider has a current and valid provisional or  
3 final certificate of authority.

4 (c) If a provider subcontracts or assigns to another  
5 entity the responsibility to provide continuing care, that  
6 other entity shall have a current and valid certificate of  
7 authority, ~~except that the~~. *The* provider holding a  
8 certificate of authority may contract for the provision of  
9 a particular aspect of continuing care, such as medical  
10 care, with another entity that does not possess a  
11 certificate of authority, if that other entity is  
12 appropriately licensed under laws of this state to provide  
13 that care, and that care is not paid for more than one year  
14 in advance.

15 (d) If an entity enters into an agreement to provide  
16 care for life or for more than one year to a person under  
17 60 years of age in return for payment of an entrance fee  
18 or periodic charges, and the agreement includes the  
19 provision of services to that person after age 60, the entity  
20 shall either terminate the *continuing care* contract or  
21 meet all requirements of this chapter when the first such  
22 person turns 60 years of age.

23 (e) Homeowner's associations, cooperatives, or  
24 condominium associations shall not be ~~solely responsible~~  
25 ~~for fulfilling the obligations of any continuing care~~  
26 ~~contract and shall only be issued a certificate of authority~~  
27 ~~in conjunction with another responsible entity providers.~~

28 *SEC. 4. Section 1771.4 of the Health and Safety Code*  
29 *is amended to read:*

30 1771.4. Any entity which promises to provide care for  
31 life or for more than one year in return for payment of an  
32 entrance fee or periodic charges from, or on behalf of, a  
33 person 60 years of age or older shall first obtain written  
34 licenses for the entire ~~facility~~ *continuing care retirement*  
35 *community* pursuant to Chapter 3.2 (commencing with  
36 Section 1569), *including residential living and personal*  
37 *care units*, and Chapter 2 (commencing with Section  
38 1250) if a skilled nursing facility is on the premises.

39 *SEC. 5. Section 1771.5 is added to the Health and*  
40 *Safety Code, to read:*



1 1771.5. (a) *A continuing care retirement community*  
2 *shall maintain an environment that enhances the*  
3 *residents' self-determination and independence. The*  
4 *provider shall:*

5 (1) *Permit the formation of a resident council by*  
6 *interested residents, provide space and post notices for*  
7 *meetings, and provide assistance in attending meetings*  
8 *for those residents who request it. In order to permit a*  
9 *free exchange of ideas, at least part of each meeting shall*  
10 *be conducted without the presence of any continuing*  
11 *care retirement community personnel. The council may,*  
12 *among other things, make recommendations to*  
13 *management regarding resident issues which impact*  
14 *their quality of life.*

15 (2) *Establish policies and procedures that promote the*  
16 *sharing of information, dialogue between residents and*  
17 *management and access to the board of directors or*  
18 *general partners. The policies and procedures shall be*  
19 *evaluated at a minimum of every two years by the*  
20 *continuing care retirement community administration to*  
21 *determine their effectiveness in maintaining meaningful*  
22 *resident/management relations.*

23 (b) *The department may, upon receiving a complaint*  
24 *relative to this section, request a copy of the policies and*  
25 *procedures along with documentation on the conduct*  
26 *and findings of any self-evaluations and consult with the*  
27 *Continuing Care Contract Committee for determination*  
28 *of compliance.*

29 (c) *Failure to comply with this section shall be grounds*  
30 *for suspension, condition, or revocation of the provisional*  
31 *or final certificate of authority pursuant to Section*  
32 *1794.20.*

33 *SEC. 6. Section 1771.6 of the Health and Safety Code*  
34 *is amended to read:*

35 1771.6. (a) *This chapter does not apply to any of the*  
36 *following:*

37 (1) *Any arrangement for the care of a person by a*  
38 *relative.*

39 (2) *Any arrangement for the care of a person or*  
40 *persons from only one family by a friend.*



1 (b) Any market test feasibility study during which  
2 reservation fees are being collected shall not be  
3 considered to be a violation of this chapter, provided that  
4 all of the following have occurred:

5 (1) An application for a permit to sell deposit  
6 subscriptions and a certificate of authority for the project  
7 has been filed with, and ~~has not been denied the receipt~~  
8 *has been acknowledged in writing* by, the department.

9 ~~(2) The department has completed a review of the~~  
10 ~~application documentation to determine its adequacy.~~

11 ~~(3) The amount of each reservation fee does not~~  
12 ~~exceed 1 percent of the average entrance fee.~~

13 ~~(4) —~~

14 (3) The reservation fee is placed in escrow.

15 ~~(5) —~~

16 (4) The escrow agreement provides for a refund  
17 within 10 calendar days after the request of a potential  
18 resident or within 10 calendar days after denial of the  
19 application *for the permit to sell deposit subscriptions*.

20 ~~(6) —~~

21 (5) The escrow agreement provides for the conversion  
22 of the reservation fee to a deposit subscription when a  
23 permit to sell deposit subscriptions is issued.

24 *SEC. 7. Section 1771.8 of the Health and Safety Code*  
25 *is amended to read:*

26 1771.8. (a) Any entity which believes its project is not  
27 subject to this chapter or which is contemplating a project  
28 which it believes may not be subject to this chapter, may  
29 apply to the department for a Letter of Non-applicability.  
30 ~~The application shall be in writing and shall list the~~  
31 ~~reasons why the existing or proposed project may be~~  
32 ~~exempt.~~

33 (b) *Applications for Letters of Non-applicability shall*  
34 *be made to the department in writing and include the*  
35 *following:*

36 (1) *A nonrefundable one thousand dollar (\$1,000)*  
37 *application fee.*

38 (2) *A list of the reasons why the existing or proposed*  
39 *project may be exempt.*



1 (3) *A copy of the existing or proposed contract*  
2 *between the entity and residents.*

3 (4) *Copies of all advertising material.*

4 (5) *Any other reasonable information requested by*  
5 *the department.*

6 (c) *The department shall follow these timelines in*  
7 *reviewing requests for Letters of Non-applicability:*

8 (1) *Within seven calendar days, the department shall*  
9 *acknowledge receipt of the request.*

10 (2) *Within 30 calendar days after all materials are*  
11 *received, the department shall either issue the Letter of*  
12 *Non-applicability, or notify the entity of the department's*  
13 *reasons for denial of the request.*

14 (d) *If the department determines that the entity does*  
15 *not qualify for a Letter of Non-applicability, the entity*  
16 *shall refrain from or immediately cease entering into*  
17 *continuing care contracts.*

18 (1) *If the entity intends to provide continuing care, an*  
19 *application for a certificate of authority shall be filed with*  
20 *the department pursuant to this chapter.*

21 (2) *If the entity does not intend to provide continuing*  
22 *care, it shall alter its plan of operation so that the project*  
23 *is not subject to this chapter and submit a new application*  
24 *and fee for a Letter of Non-applicability.*

25 *SEC. 7.5. Section 1772 of the Health and Safety Code*  
26 *is amended to read:*

27 1772. (a) Except as otherwise provided in paragraph  
28 (5) of subdivision (a) of Section 1788, no report, circular,  
29 public announcement, certificate, financial statement, or  
30 any other printed matter or advertising material, or oral  
31 representation, ~~which lists or refers to the name of any~~  
32 ~~entity, including, but not limited to, registered charities,~~  
33 ~~religious organizations, and corporate entities, shall be~~  
34 ~~used to solicit or induce persons to enter into continuing~~  
35 ~~care contracts, unless there is on file that states or implies~~  
36 ~~that any entity sponsors, guarantees, or assures the~~  
37 ~~performance of any continuing care contract, shall be~~  
38 ~~published or presented to any prospective resident unless~~  
39 ~~the entity files with the department a written and legally~~  
40 ~~sufficient document of acceptance of full financial~~



1 responsibility ~~and liability by the entity for the contracts~~  
2 *for each continuing care contract. Each entity shall be*  
3 *listed as a provider on the certificate of authority and shall*  
4 *be cosigner on the continuing care contracts.*

5 *(1) Soliciting and inducing includes the use of the*  
6 *name of a sponsoring organization for the purpose of*  
7 *implying that the sponsoring entity's reputation may be*  
8 *relied upon to determine the likelihood of success with*  
9 *the proposed continuing care retirement community.*

10 *(2) If the department determines that an entity is not*  
11 *financially responsible, that fact may be specified by a*  
12 *conspicuous statement in each continuing care contract.*

13 (b) On written appeal to the department, and for good  
14 cause shown, the department may, in its discretion, allow  
15 an affinity group exemption from this section. If an  
16 exemption is granted, every continuing care contract  
17 shall include a conspicuous statement which clearly  
18 informs the transferor that such entity is not financially  
19 responsible.

20 *(c) If the name of any entity, including, but not limited*  
21 *to, a religion, is used in connection with the development,*  
22 *marketing, or continued operation of a continuing care*  
23 *retirement community, but that entity has no actual*  
24 *affiliation with owning, controlling, managing, or*  
25 *otherwise operating the facility, the providers shall*  
26 *expressly disclose this lack of affiliation in the continuing*  
27 *care contract.*

28 *(d) All printed advertising materials, including*  
29 *brochures, circulars, public announcements, and similar*  
30 *publications pertaining to continuing care shall either:*

31 *(1) Identify the current status of the continuing care*  
32 *retirement community, including an applicant for*  
33 *continuing care, permit to sell deposit subscriptions*  
34 *issued, or provisional certificate of authority issued.*

35 *(2) If a Certificate of Authority has been issued, specify*  
36 *the providers' certificate of authority number.*

37 *SEC. 8. Section 1773 of the Health and Safety Code is*  
38 *amended to read:*

39 1773. No certificate of authority has value for sale or  
40 exchange as property. No provider shall sell or transfer



1 ownership of the ~~facility~~ *continuing care retirement*  
 2 *community* or enter into a contract with a third party  
 3 entity for management of the ~~facility~~ *continuing care*  
 4 *retirement community* without the approval of the  
 5 department. *Violation of this section is grounds for*  
 6 *revocation of the certificate of authority.*

7 *SEC. 9. Section 1775 of the Health and Safety Code is*  
 8 *amended to read:*

9 1775. (a) ~~This chapter is in addition to, and does not~~  
 10 ~~supersede, any other provision of law or regulations~~  
 11 ~~adopted pursuant thereto which are as strict or stricter.~~

12 ~~(b)~~ To the extent that this chapter conflicts with the  
 13 statutes ~~and~~, regulations, *or interpretations* enforced by  
 14 the Department of Real Estate, this chapter *as*  
 15 *interpreted by the department* shall have precedence.

16 ~~(c)~~

17 (b) Notwithstanding any law or regulation to the  
 18 contrary, in ~~an equity project, any continuing care~~  
 19 *retirement community* the provider may restrict or  
 20 abridge the right of ~~the owner of any resident, whether~~  
 21 *or not he owns* an equity interest, to sell ~~or~~ lease ~~the~~  
 22 *equity, encumber, or otherwise convey any interest in the*  
 23 *resident's unit*, and may require that the ~~owner resident~~  
 24 *only* sell ~~or~~ lease ~~the equity, or otherwise convey the~~  
 25 interest ~~only~~ to persons approved by the provider.  
 26 Provider approval may be based on factors which include,  
 27 but are not limited to, age, health status, ~~and insurance~~  
 28 *risk, financial status, burden on the providers' personnel,*  
 29 *resources, or the continuing care retirement community.*  
 30 Any restrictions *on a real property interest* shall be  
 31 recorded by the provider.

32 ~~(d)~~

33 (c) To the extent that this chapter conflicts with  
 34 Sections 51.2 and 51.3 of the Civil Code, this chapter shall  
 35 have precedence. A continuing care ~~facility provider~~, at  
 36 its discretion, may limit entrance based on age.

37 ~~(e)~~

38 (d) This chapter imposes minimum requirements  
 39 upon any entity undertaking the responsibility for  
 40 providing one or more elements of care to an elderly



1 person for the duration of his or her life or for a term in  
2 excess of one year, in exchange for any prepayment or  
3 transfer of property prior to the services actually being  
4 rendered, whether or not the prepayment or transfer of  
5 property is supplemented with periodic or other  
6 payments.

7 ~~(f)~~

8 (e) This chapter shall be liberally construed for the  
9 protection of persons attempting to secure their care for  
10 the remainder of their lifetime or for a period in excess  
11 of one year.

12 (f) *A resident's entry into a continuing care contract*  
13 *described in this chapter shall be presumptive evidence*  
14 *of the resident's intent not to return to their prior*  
15 *residence to live for purposes of qualifying for Medi-Cal*  
16 *coverage under Sections 14000 et seq. of the Welfare and*  
17 *Institutions Code and Section 50425 of Title 22 of the*  
18 *California Code of Regulations.*

19 SEC. 10. *Section 1776.2 of the Health and Safety Code*  
20 *is amended to read:*

21 1776.2. The department may, by any duly authorized  
22 representative, inspect and examine any continuing care  
23 ~~facility~~ *retirement community*, including the books and  
24 records thereof, or the performance of any service  
25 required by the continuing care contracts.

26 SEC. 11. *Section 1777 of the Health and Safety Code*  
27 *is amended to read:*

28 1777. (a) The ~~Committee~~ ~~on~~ Continuing Care  
29 Contracts *Committee* of the State Department of Social  
30 Services shall act in an advisory capacity to the  
31 department on matters relating to continuing care  
32 contracts.

33 (b) The members of the committee shall include:

34 (1) Three representatives of nonprofit *continuing*  
35 *care providers* ~~of continuing care contracts~~ pursuant to  
36 this chapter, each of whom shall have offered continuing  
37 care services for at least five years prior to appointment.  
38 *One member shall represent a multifacility provider and*  
39 *shall be appointed by the Governor in even years. One*  
40 *member shall be appointed by the Senate Committee on*



1 *Rules and shall be appointed in odd years. One member*  
2 *shall be appointed by the Speaker of the Assembly and*  
3 *shall be appointed in odd years.*

4 (2) Three senior citizens who are not eligible for  
5 appointment pursuant to paragraphs (1) and (4) who  
6 shall represent consumers of continuing care services, at  
7 least two of whom shall be residents of continuing care  
8 retirement communities. *One member shall be*  
9 *appointed by the Governor and shall be appointed in*  
10 *even years. One member shall be appointed by the*  
11 *Senate Committee on Rules and shall be appointed in odd*  
12 *years. One member shall be appointed by the Speaker of*  
13 *the Assembly and shall be appointed in odd years.*

14 (3) A certified public accountant with experience in  
15 the community care industry, who is not a provider of  
16 continuing care services. *This member shall be appointed*  
17 *by the Governor in even years.*

18 (4) ~~One~~ A representative of a for-profit provider of  
19 continuing care contracts pursuant to this chapter. *This*  
20 *member shall be appointed by the Governor in even*  
21 *years.*

22 (5) An actuary. *This member shall be appointed by the*  
23 *Governor in even years.*

24 (c) ~~Committee members shall be appointed as follows:~~

25 ~~(1) Five members shall be appointed by the Governor.~~

26 ~~(2) Two members shall be appointed by the Senate~~  
27 ~~Committee on Rules, one of whom shall be appointed~~  
28 ~~pursuant to paragraph (2) of subdivision (b).~~

29 ~~(3) Two members shall be appointed by the Speaker~~  
30 ~~of the Assembly, one of whom shall be appointed~~  
31 ~~pursuant to paragraph (2) of subdivision (b).~~

32 ~~(4) All~~ *Commencing January 1, 1997, all members shall*  
33 *serve two-year terms and be appointed based on their*  
34 *interest and expertise in the subject area. The Governor*  
35 *shall designate the chairperson for the committee with*  
36 *the advice and consent of the Senate. All members shall*  
37 *serve at the pleasure of the appointing power. A member*  
38 *may be reappointed at the pleasure of the appointing*  
39 *power. It shall be the duty of the appointing power to fill*  
40 *all vacancies on the committee within 60 days. These*



1 *members shall continue to serve until their successors are*  
 2 *appointed and qualified.*

3 (d) The members of the committee shall serve  
 4 without compensation, except that each member shall be  
 5 paid *from the Continuing Care Contract Provider Fee*  
 6 *Fund* a per diem of twenty-five dollars (\$25) for each  
 7 day’s attendance at a meeting of the committee not to  
 8 exceed six days in any month. The members of the  
 9 committee shall also receive their actual and necessary  
 10 traveling expenses incurred in the course of their duties.

11 (e) *Prior to commencement of service, each member*  
 12 *shall file with the department a statement of economic*  
 13 *interest and a statement of conflict of interest pursuant*  
 14 *to Article 3 (commencing with Section 87300) of the*  
 15 *Government Code.*

16 (f) *If, during the period of appointment, any member*  
 17 *no longer meets the qualifications of subdivision (b), that*  
 18 *member shall submit his or her resignation to their*  
 19 *appointing power and a qualified new member shall be*  
 20 *appointed to fulfill the remainder of the term.*

21 *SEC. 12. Section 1777.2 of the Health and Safety Code*  
 22 *is amended to read:*

23 1777.2. (a) ~~The Committee on~~ Continuing Care  
 24 Contracts *Committee* shall:

25 (1) Review the financial and managerial condition of  
 26 each ~~facility~~ *continuing care retirement community*  
 27 operating under a certificate of authority.

28 (2) Review the financial condition of any ~~facility~~  
 29 *continuing care retirement community* that the  
 30 committee determines is indicating signs of financial  
 31 difficulty and may be in need of close supervision.

32 (3) Monitor the condition of ~~facilities at times and~~  
 33 ~~places~~ *continued care retirement communities* as the  
 34 department or the chair of the committee may direct.

35 (4) Make available consumer information on the  
 36 selection and necessary contract protections in the  
 37 purchase of ~~life~~ *continuing care contracts.*

38 (5) Review new applications regarding financial,  
 39 actuarial, and marketing feasibility as requested by the  
 40 department.



1 (b) The committee shall make recommendations to  
 2 the department regarding needed changes in its rules  
 3 and regulations and upon request provide advice  
 4 regarding the feasibility of new ~~facilities~~ *continuing care*  
 5 *retirement communities* and the correction of problems  
 6 relating to the management or operation of any ~~facility~~  
 7 *continuing care retirement community*. The committee  
 8 shall also perform any other advisory functions necessary  
 9 to improve the management and operation of continuing  
 10 care ~~facilities~~ *retirement communities*.

11 (c) The committee may report on its  
 12 recommendations directly to the director of *the*  
 13 *department*.

14 (d) The committee may hold meetings, as deemed  
 15 necessary to the performance of its duties.

16 *SEC. 13. Section 1777.4 of the Health and Safety Code*  
 17 *is amended to read:*

18 1777.4. Any member of the ~~Committee~~  
 19 *Continuing Care Contracts Committee* is immune from  
 20 civil liability based on acts performed in his or her official  
 21 capacity. Costs of defending civil actions brought against  
 22 a member for acts performed in his or her official capacity  
 23 shall be borne by the complainant. However, nothing in  
 24 this section immunizes any member for acts or omissions  
 25 performed with malice or in bad faith.

26 *SEC. 14. Section 1778 of the Health and Safety Code*  
 27 *is amended to read:*

28 1778. (a) There is hereby created in the State  
 29 Treasury a fund which shall be known as the Continuing  
 30 Care Provider Fee Fund. The fund shall consist of fees  
 31 received by the department pursuant to ~~Sections 1779.2~~  
 32 ~~and 1791~~ *this chapter*. Notwithstanding Section 13340 of  
 33 the Government Code, the Continuing Care Provider  
 34 Fee Fund is hereby continuously appropriated *to the*  
 35 *department*, without regard to fiscal years, ~~to the~~  
 36 ~~department for the purpose of funding all of the~~  
 37 ~~following:~~

38 (b) *Use of the funds appropriated pursuant to this*  
 39 *section shall include funding of the following:*



1 ~~(1) Statistical and actuarial studies for use by providers~~  
2 ~~and for program management by the department.~~  
3 *Program personnel salary costs, to include but not be*  
4 *limited to: Continuing Care Contracts Program Manager,*  
5 *appointed at a Staff Services Manager III level or above;*  
6 *Financial Analyst; two Staff Services Analyst/Associate*  
7 *Governmental Program Analyst; Office Technician; and*  
8 *legal support to include one full-time Senior Staff Counsel*  
9 *or above.*

10 (2) Contracts with technically qualified persons, *to*  
11 *include but not be limited to financial, actuarial, and*  
12 *marketing consultants, as necessary to provide advice*  
13 *regarding the feasibility or viability of proposed facilities*  
14 *continuing care retirement communities and providers.*

15 ~~(3) Development of improved systems and~~  
16 ~~procedures of the department for carrying out the~~  
17 ~~responsibilities imposed by this chapter, in consultation~~  
18 ~~with the Committee on Continuing Care Contracts.~~

19 ~~(b) The department may engage private financial,~~  
20 ~~actuarial, and marketing consultants to review~~  
21 ~~applications for permits to sell deposit subscriptions and~~  
22 ~~certificates of authority, and shall use the funds from fees~~  
23 ~~received pursuant to this section to the extent necessary~~  
24 ~~to engage these consultants.~~

25 ~~(c) The department shall use no more than 5 percent~~  
26 ~~of the funds appropriated pursuant to this section for~~  
27 ~~administrative costs.~~

28 ~~(d) Use of the funds appropriated pursuant to this~~  
29 ~~section is limited to assisting the department in reviewing~~  
30 ~~the ability of applicants and providers to fulfill the~~  
31 ~~requirements of this chapter.~~

32 ~~(e) Other program costs or costs directly supporting~~  
33 ~~program staff.~~

34 (4) *The department shall use no more than 5 percent*  
35 *of the fees collected pursuant to this section for overhead*  
36 *costs, including facilities operation, and indirect*  
37 *department and division costs.*

38 (c) If the balance in the Continuing Care Provider Fee  
39 Fund is projected to exceed five hundred thousand  
40 dollars (\$500,000) for the next budget year, the



1 department shall adjust the calculations for the  
2 application fees under Section 1779.2 and annual fees  
3 under Section 1791 to reduce the amounts collected.

4 *(d) The intent of the Legislature is to empower the*  
5 *program administrator with the ability and authorization*  
6 *to obtain necessary resources or staffing to carry out the*  
7 *program objectives.*

8 *SEC. 15. Section 1779 of the Health and Safety Code*  
9 *is amended to read:*

10 1779. (a) An application for a permit to sell deposit  
11 subscriptions and certificate of authority shall be filed  
12 with the department, as set forth in this chapter, in any  
13 of the following circumstances:

14 (1) Prior to entering into any continuing care  
15 contracts or any deposit subscription agreements.

16 (2) Prior to initiating construction of a prospective  
17 continuing care—~~facility~~ *continuing care retirement*  
18 *community.*

19 (3) Prior to initiating construction on a new phase or  
20 expansion of an existing continuing care ~~facility~~  
21 *retirement community. An expansion has occurred when*  
22 *there is an increase in Residential Care Facility for the*  
23 *Elderly license capacity, an increase in the number of*  
24 *units at the continuing care retirement community, an*  
25 *increase in the number of skilled nursing beds, or*  
26 *additions to or replacement of existing continuing care*  
27 *retirement community structures that will result in a plan*  
28 *affecting obligations to current residents. The*  
29 *department has the discretion to eliminate portions of the*  
30 *application contents required under Section 1779.4 for an*  
31 *expansion of an existing continuing care retirement*  
32 *community.*

33 (4) Prior to converting an existing structure to a  
34 continuing care ~~facility~~ *retirement community.*

35 (5) *Prior to recommencing marketing on a planned*  
36 *facility when the applicant has previously forfeited a*  
37 *permit to sell deposit subscriptions pursuant to Section*  
38 *1794.4.*



1 (6) *Prior to executing new continuing care contracts*  
2 *after a provisional or final certificate of authority has been*  
3 *inactivated, revoked, surrendered, or forfeited.*

4 (7) *Prior to closing the sale or transfer of a continuing*  
5 *care retirement community.*

6 (b) If the provider undergoes an organizational  
7 change, including, but not limited to, a change in  
8 structure, separation, or merger, a new application shall  
9 be required and a new certificate of authority must be  
10 issued by the department before any continuing care  
11 contracts may be executed by the new entity.

12 (c) A new application is not required for an entity  
13 name change, if there is no change in the entity structure  
14 or management. If the provider undergoes a name  
15 change, the provider shall notify the department of the  
16 name change and shall return the previously issued  
17 certificate of authority for reissuance under the new  
18 corporate name.

19 *SEC. 16. Section 1779.2 of the Health and Safety Code*  
20 *is amended to read:*

21 1779.2. (a) A formal application shall be made by a  
22 person or organization to the department for a permit to  
23 sell deposit subscriptions and certificate of authority, as  
24 provided in this chapter. ~~The application shall be~~  
25 ~~completed on forms prescribed by the department.~~

26 (b) A separate application shall be required for each  
27 proposed project *which includes all planned phases.*

28 (c) The application shall be signed under penalty of  
29 perjury by the applicant, ~~if an individual, or~~ *If the*  
30 *applicant is a corporation, the chief executive officer of*  
31 ~~the applicant, shall sign the application and certified by~~  
32 ~~the oath of the applicant or the chief executive officer of~~  
33 ~~the applicant, stating~~ *certify* that to the best of his or her  
34 knowledge and belief, the items are correct. *If the*  
35 *applicant is a partnership, each general partner shall sign*  
36 *the application and certification. If there are multiple*  
37 *applicants, the above requirements apply to each.*

38 (d) An application fee shall be required whenever a  
39 provider applies for a permit to sell deposit subscriptions  
40 and certificate of authority ~~with respect to a facility for~~



1 ~~which a certificate of authority has not previously been~~  
2 ~~issued.~~

3 ~~(1) The~~

4 ~~The~~ application fee shall be calculated and submitted  
5 to the department as follows:

6 ~~(A)~~

7 ~~(1) Each application shall be accompanied by~~  
8 ~~payment to the Continuing Care Provider Fee Fund of 80~~  
9 ~~percent of the application fee, which is calculated, for~~  
10 ~~purposes of this paragraph, as one-tenth of 1 percent of~~  
11 ~~the purchase price of the facility, or the estimated~~  
12 ~~construction cost, including the purchase price of the~~  
13 ~~land or the present value of any long-term lease for all~~  
14 ~~currently planned phases. Processing of the application~~  
15 ~~shall not begin until this fee is received.~~

16 ~~(B)~~

17 ~~(A) For new continuing care retirement communities~~  
18 ~~or for the sale or transfer of existing continuing care~~  
19 ~~retirement communities, the application fee is calculated~~  
20 ~~as one-tenth of 1 percent of the purchase price of the~~  
21 ~~continuing care retirement community, or the estimated~~  
22 ~~construction cost, including the purchase price of the~~  
23 ~~land or the present value of any long-term lease.~~

24 ~~(B) For existing continuing care retirement~~  
25 ~~communities that are proposing remodeling or an~~  
26 ~~expansion, the application fee is calculated as one-tenth~~  
27 ~~of 1 percent of the cost of the addition, annexation, or~~  
28 ~~renovation, including the cost of the land and~~  
29 ~~improvements.~~

30 ~~(C) For existing facilities converting to continuing~~  
31 ~~care retirement communities, the application fee is~~  
32 ~~calculated as one-tenth of 1 percent of the current~~  
33 ~~appraised value of the facility, including land or present~~  
34 ~~value of any long-term lease.~~

35 (2) Payment to the Continuing Care Provider Fee  
36 Fund of the remainder of the application fee shall be  
37 made at or before the time of issuance of the provisional  
38 certificate of authority. ~~For purposes of this paragraph,~~  
39 ~~the~~ The application fee shall be calculated as one-tenth of  
40 1 percent of the purchase price of the ~~facility~~ continuing



1 *care retirement community*, or the actual construction  
2 cost, including the purchase price of the land or the  
3 present value of any long-term lease, less the payment  
4 included with the application. The provisional certificate  
5 of authority shall not be issued until the balance of the fee  
6 is paid.

7 *SEC. 17. Section 1779.4 of the Health and Safety Code*  
8 *is amended to read:*

9 1779.4. ~~(a)~~—An application shall contain all of the  
10 following:

11 ~~(1)~~

12 (a) The name and business address of the applicant.

13 ~~(2)~~

14 (b) *An itemization of the total fee calculation,*  
15 *including sources of figures used, and a check in the*  
16 *amount of 80 percent of the total application fee.*

17 (c) The name, address, and a description of the  
18 ~~physical~~ *real* property of the ~~facility~~ *continuing care*  
19 *retirement community.*

20 ~~(3)~~

21 (d) The estimated number of *continuing care*  
22 residents of the ~~facility to be provided services by the~~  
23 ~~applicant pursuant to the continuing care contracts~~  
24 *continuing care retirement community.*

25 ~~(4)~~

26 (e) A description of the proposed ~~project~~ *continuing*  
27 *care retirement community*, including the services and  
28 care to be available for residents or provided to residents,  
29 or both.

30 ~~(5)~~

31 (f) A statement indicating whether the application is  
32 for a *certificate of authority to enter into life care facility*  
33 *contracts.*

34 ~~(6)~~

35 (g) Documentation evidencing a preliminary  
36 approval for licensure from the State Department of  
37 Social Services, Community Care Licensing Division, or  
38 the Licensing and Certification Division of the State  
39 Department of Health Services, as appropriate.

40 ~~(7)~~



1 (h) If the applicant is an individual, a statement  
2 disclosing any revocation or other disciplinary action  
3 taken, or in the process of being taken, against a license,  
4 permit, or certificate held or previously held by the  
5 applicant.

6 ~~(8)~~

7 (i) A description of any matter in which any principal  
8 involved with the ~~project~~ *proposed continuing care*  
9 *retirement community* has been convicted of a felony or  
10 pleaded nolo contendere to a felony charge, or been held  
11 liable or enjoined in a civil action by final judgment, if the  
12 felony or civil action involved fraud, embezzlement,  
13 fraudulent conversion, or misappropriation of property.  
14 For the purpose of this paragraph, “principal” means any  
15 ~~person having any decisionmaking authority for any~~  
16 ~~aspect of the project~~ *representative of the developer or*  
17 *applicant including a general partner, chief executive*  
18 *officer, or chief operating officer who has significant*  
19 *decisionmaking authority with respect to the proposed*  
20 *continuing care retirement community.*

21 ~~(9)~~

22 (j) If the applicant is an entity other than an  
23 individual, the following information also shall be  
24 submitted:

25 ~~(A)~~

26 (1) A statement naming the type of legal entity and  
27 listing the interest and extent of the interest of each  
28 principal in the legal entity. For the purposes of this  
29 paragraph, “principal” means any person or entity  
30 having a 10 percent or more financial interest in the legal  
31 entity ~~or, if the legal entity is a trust, each beneficiary of~~  
32 ~~the trust holding a 10 percent or more beneficial interest~~  
33 ~~in the trust.~~ *When the application is submitted in the*  
34 *name of a corporation, the parent, sole corporate*  
35 *shareholder, or sole corporate member shall be listed as*  
36 *an applicant, when that parent or sole corporate member*  
37 *controls the operation of the continuing care retirement*  
38 *community. When multiple corporate applicants exist,*  
39 *they shall be listed jointly by corporate name on the*  
40 *application, and the certificate shall be issued in the joint*



1 *names of the corporations. When the application is*  
 2 *submitted by a partnership, all general partners shall be*  
 3 *listed as applicants and the certificate shall be issued in*  
 4 *the joint names of the general partners.*

5 ~~(B)~~

6 (2) The names of the members of the board of  
 7 directors, the trustees, the ~~managing~~ *general* partners, or  
 8 other responsible officers of the legal entity.

9 ~~(C)~~

10 (3) A statement as to whether the applicant was or is  
 11 affiliated with a religious, charitable, nonprofit or  
 12 for-profit organization, the extent of any affiliation, ~~and~~  
 13 *The statement shall also include* the extent, if any, to  
 14 which the affiliate organization will be responsible for the  
 15 financial and contract obligations of the applicant.

16 ~~(D) If an affiliate organization will be responsible for~~  
 17 ~~the financial contract obligations of the applicant, a~~  
 18 ~~statement to that effect by the affiliate organization, and~~  
 19 *shall be* signed by a responsible officer of the affiliate  
 20 organization.

21 ~~(E) If the applicant is a subsidiary corporation or the~~  
 22 ~~affiliate of another corporation, a~~

23 (4) A statement identifying ~~the~~ *any* parent  
 24 corporation or ~~the~~ other affiliate corporation, the primary  
 25 activities ~~of the parent or other affiliate corporation,~~ and  
 26 the interest in the applicant held by ~~the parent or other~~  
 27 ~~affiliate corporation~~ *each entity.*

28 ~~(F)~~

29 (5) Copies of all contracts, management agreements  
 30 or other documents, setting forth the relationships of the  
 31 entities.

32 ~~(G)~~

33 (6) A statement as to whether the applicant, a  
 34 principal, a parent, affiliate, or subsidiary corporation, or  
 35 any other affiliate entity, or any responsible employee,  
 36 manager, board member, or anyone who otherwise  
 37 profits from the ~~facility~~ *continuing care retirement*  
 38 *community*, has had applied against it, any injunctive or  
 39 restrictive order of a court of record, or any suspension or  
 40 revocation of any state or federal license, permit, or



1 certificate, arising out of or relating to business activity of  
2 health or nonmedical care, including, but not limited to,  
3 actions affecting a license to operate a health care  
4 institution, a nursing home, an intermediate care facility,  
5 a hospital, or a home health agency, residential care  
6 facility for the elderly, community care facility, or child  
7 day care facility.

8 ~~(10)~~

9 (k) A description of the business experience of the  
10 applicant in the operation *or management* of similar  
11 facilities ~~and, if the facility will be managed on a~~  
12 ~~day-to-day basis by a corporation or organization other~~  
13 ~~than the applicant, a description of the business~~  
14 ~~experience of the manager in the operation and the~~  
15 ~~management of similar facilities.~~

16 ~~(11)~~

17 (l) A copy of any advertising material regarding the  
18 proposed ~~project~~ *continuing care retirement community*  
19 prepared for distribution or publication.

20 ~~(12)~~

21 (m) Evidence of the bonds required by Section 1789.8.

22 ~~(13)~~

23 (n) Copies of the proposed continuing care contracts  
24 to be entered into with residents of the ~~facility~~ *continuing*  
25 *care retirement community*.

26 ~~(14)~~

27 (o) A copy of the proposed deposit subscription  
28 agreement form.

29 ~~(15)~~

30 (p) The name of the proposed escrow agent *and*  
31 *depository*.

32 ~~(16)~~

33 (q) Copies of all escrow agreements.

34 ~~(17)~~

35 (r) A statement of any periodic fees to be paid by  
36 residents, the components and services considered in  
37 determining such fees, and the manner by which the  
38 provider may adjust these fees in the future. If the ~~facility~~  
39 *continuing care retirement community* is already in  
40 operation, or if the provider operates one or more similar



1 ~~facilities~~ *continuing care retirement communities* within  
2 this state, the statement shall include tables showing the  
3 frequency and each percentage increase in periodic rates  
4 at each ~~facility~~ *continuing care retirement community*  
5 for the previous five years, or such shorter period as each  
6 ~~facility~~ *continuing care retirement community* may have  
7 been operated by the provider or his or her predecessor  
8 in interest.

9 ~~(18)~~

10 (s) A statement of the provisions that have been made,  
11 or will be made, to provide reserve funding or security by  
12 the provider to enable the provider to fully perform his  
13 or her obligations pursuant to continuing care contracts,  
14 including, but not limited to, the establishment of escrow  
15 accounts in financial institutions, trusts, or reserve funds.

16 ~~(19)~~

17 (t) A copy of audited financial statements for the three  
18 most recent fiscal years of the applicant or any shorter  
19 period of time the applicant has been in existence,  
20 prepared in accordance with generally accepted  
21 accounting principles and accompanied by an  
22 independent auditor's report from a reputable firm of  
23 certified public accountants. The audited financial  
24 statements shall be accompanied by a statement signed  
25 and dated by both the chief financial officer and chief  
26 executive officer *for the identified corporation, or by*  
27 *each general partner*; that the financial statements are  
28 complete, true, and correct in all material matters to the  
29 best of their knowledge.

30 ~~(20) If~~

31 (u) *Unaudited interim financial statements shall be*  
32 *included if* the applicant's fiscal year ended more than 90  
33 days prior to the date of filing, ~~there shall also be included~~  
34 ~~unaudited interim financial.~~ *The statements, shall be*  
35 either quarterly or monthly, prepared on the same basis  
36 as the annual audited financial statements or other basis  
37 acceptable to the department ~~covering the.~~ *The period*  
38 *between the end of the most recent fiscal year for which*  
39 *audited financial statements are submitted and a date not*  
40 *more than 90 days prior to the date the application is filed*



1 *shall be covered in the unaudited interim financial*  
2 *statements.*

3 ~~(21)~~

4 (v) A financial and marketing feasibility study  
5 prepared by a firm acceptable to the department. The  
6 study shall include or address, as appropriate, all of the  
7 following items:

8 ~~(A)~~

9 (1) A narrative describing the applicant, its prior  
10 experience, qualifications, and management, including a  
11 descriptive analysis of the ~~project~~ *proposed continuing*  
12 *care retirement community* and its service package, fee  
13 structure, and anticipated opening date.

14 ~~(B)~~

15 (2) A narrative describing the financing and  
16 construction plans for the ~~project~~ *proposed continuing*  
17 *care retirement community*, including a statement of the  
18 anticipated source and application of the funds to be used  
19 in the purchase, lease, rental, or construction. This  
20 statement shall include, but not be limited to, all of the  
21 following:

22 ~~(i)~~

23 (A) A description of any mortgage loan or other  
24 long-term financing intended to be used for the financing  
25 of the ~~facility~~ *continuing care retirement community*,  
26 including the anticipated terms and costs of the  
27 financing. This indebtedness shall not exceed the  
28 appraised value of the ~~facility~~ *continuing care retirement*  
29 *community*.

30 ~~(ii)~~

31 (B) Equity to be contributed by the applicant.

32 ~~(iii)~~

33 (C) Other sources of funds, including entrance fees, if  
34 applicable.

35 ~~(iv)~~

36 (D) An estimate of the cost of purchasing, leasing,  
37 renting, designing, or constructing and equipping the  
38 ~~facility~~ *continuing care retirement community*,  
39 including, but not limited to, such related costs as  
40 financing expense, legal expense, land costs, occupancy

1 development costs, and all other similar costs which the  
2 provider expects to incur, or become obligated for, prior  
3 to the commencement of operation.

4 ~~(v)~~

5 (E) Interest expense, insurance premiums, and  
6 property taxes prior to opening.

7 ~~(vi)~~

8 (F) An estimate of any ~~project~~ *proposed continuing*  
9 *care retirement community* reserves required for items  
10 such as debt service, insurance premiums, and  
11 operations.

12 ~~(vii)~~

13 (G) An estimate of any funds which are anticipated to  
14 be necessary to fund startup losses and to assure full  
15 performance of the obligations of the provider pursuant  
16 to continuing care contracts, including, but not limited to,  
17 any reserve fund escrow.

18 ~~(C)~~

19 (3) An analysis of the potential market, addressing  
20 such items as:

21 ~~(i)~~

22 (A) Service area, including its demographic,  
23 economic, and growth characteristics.

24 ~~(ii)~~

25 (B) Forecasts of penetration based on the proposed  
26 fee structure.

27 ~~(iii)~~

28 (C) Existing and planned competition in and about  
29 the primary service area.

30 ~~(D)~~

31 (4) A detailed description of the sales and marketing  
32 plan, addressing such items as:

33 ~~(i)~~

34 (A) Marketing schedule, anticipated sales, and  
35 cancellation rates.

36 ~~(ii)~~

37 (B) Month-by-month forecast of unit sales through  
38 sellout.

39 ~~(iii)~~



1 (C) A marketing plan describing the methods,  
2 staffing, and advertising media.

3 ~~(iv)~~

4 (D) An estimate of the total entrance fees to be  
5 received from residents prior to completion of  
6 occupancy.

7 ~~(E)~~

8 (5) Projections of move-in rates, deposit subscription  
9 fee collections, couple mix by unit type, age distribution,  
10 care and nursing unit utilization, and unit turnover or  
11 resale rates.

12 ~~(F)~~

13 (6) A description or analysis of development-period  
14 costs and revenues. This item should be provided to the  
15 department on a quarterly basis, throughout the  
16 development of the ~~project~~ *proposed continuing care*  
17 *retirement community*.

18 ~~(22)~~

19 (w) Projected annual financial statements for a period  
20 commencing on the first day of the first fiscal year,  
21 following the most recent year for which an audited  
22 financial statement has been provided, through at least  
23 the fifth year of operations.

24 ~~(A)~~

25 (1) The projected annual financial statements shall be  
26 on an accrual basis using the same accounting principles  
27 and procedures as the audited financial statements  
28 furnished pursuant to paragraph ~~(19)~~ (u), but need not  
29 be audited.

30 ~~(B)~~

31 (2) Separate projected annual cash-flow statements  
32 shall be provided. The statements shall cover the entire  
33 duration of debt, and be presented on a quarterly basis  
34 during the preopening, construction, and fill-up periods.  
35 *If the real property is leased, the cash-flow statement shall*  
36 *project the feasibility of closing the continuing care*  
37 *retirement community at the end of the lease period.*

38 ~~(i)~~

39 (A) The projected annual cash-flow statements shall  
40 be submitted, using prevailing rates of interest, with no

1 increase of revenues and expenses due to inflation, as one  
2 set of assumptions.

3 ~~(ii)~~

4 (B) The projected annual cash-flow statements shall  
5 include the following:

6 ~~(I)~~

7 (i) A detailed listing, including a full explanation of all  
8 assumptions used in preparing the projections, plus  
9 supporting supplementary schedules and calculations, all  
10 to be consistent with the financial and marketing  
11 feasibility study furnished pursuant to paragraph ~~(21)~~  
12 (v), as may be required by the department for use in  
13 evaluating the feasibility of the ~~project~~ *proposed*  
14 *continuing care retirement community*.

15 ~~(II)~~

16 (ii) Cash-flows from monthly operations, including,  
17 but not limited to, monthly fees received from continuing  
18 care contracts, medical unit fees if applicable, other  
19 periodic fees, and gifts and bequests used in operations  
20 less operating expenses.

21 ~~(III)~~

22 (iii) Contractual cash-flows from activities, including,  
23 but not limited to, presales, deposit subscription receipts,  
24 sales, and ~~resales of continuing care contracts~~ *entrance*  
25 *fee receipts* less contract acquisition, ~~selling~~ *marketing*,  
26 and advertising expenditures.

27 ~~(IV)~~

28 (iv) Cash-flows from financing activities, including,  
29 but not limited to, bond or loan proceeds less bond issue  
30 or loan costs and fees, debt service including CAL  
31 Mortgage Insurance premiums, trustee fees, principal  
32 and interest payments, leases, contracts, rental  
33 agreements, or other long-term financing.

34 ~~(V)~~

35 (v) Cash-flow from investment activities, including,  
36 but not limited to, construction progress payments,  
37 architect and engineering, furnishings, and equipment  
38 not included in the construction contract, project  
39 development, inspection and testing, marketable  
40 securities, investment earnings, and interfund transfers.



1 ~~(VI)~~  
2 (vi) Increase or decrease in cash during the projection  
3 period.

4 ~~(VII)~~  
5 (vii) The beginning cash balance, which means cash,  
6 marketable securities, reserves, and other funds on hand  
7 available and committed to the ~~project~~ *proposed*  
8 *continuing care retirement community*.

9 ~~(VIII)~~  
10 (viii) Cash balance at the end of the period.

11 ~~(IX)~~  
12 (ix) Details of the components of the ending cash  
13 balance shall be provided for each period presented,  
14 including, but not limited to, the ending cash balances for  
15 bond reserves, other reserve funds, deposit subscription  
16 funds, and construction funds balance.

17 ~~(C)~~  
18 (3) If the cash-flow statements required by paragraph  
19 (B) indicate that the provider will have cash balances  
20 over and above two months' projected operating  
21 expenses of the ~~facility~~ *continuing care retirement*  
22 *community*, a description of the manner in which the  
23 cash balances will be invested, and the persons who will  
24 be making the investment decisions, shall accompany the  
25 application.

26 ~~(D)~~  
27 (4) The applicant shall furnish further explanatory  
28 information, schedules, and calculations as required by  
29 the department on actuarial data used to project  
30 occupancy rate, unit type and couple mix, sex, age, and  
31 turnover, refund, and sales rate subscription collection  
32 rates, a detailed operating budget, and projections of cash  
33 required for major repairs and improvements or on any  
34 other factor considered during the projected periods.

35 ~~(23)~~  
36 (x) A declaration acknowledging the requirement of  
37 executing and recording a Notice of Statutory Limitation  
38 on Transfer (hereinafter referred to as the notice),  
39 relating to ~~facility~~ *continuing care retirement*  
40 *community* property pursuant to this section.



1     ~~(A)~~  
 2     (1) The notice shall be acknowledged so as to entitle  
 3 it to be recorded, describe the property, declare the  
 4 ~~provider's applicant's~~ intention to use all or part of the  
 5 described property for the purposes of a continuing care  
 6 ~~facility~~ *continuing care retirement community* pursuant  
 7 to this chapter, and shall be in substantially the following  
 8 form:

9  
 10                   NOTICE OF STATUTORY LIMITATION ON  
 11                                   TRANSFER  
 12

13     Notice is hereby given that the property described  
 14 below is licensed, or proposed to be licensed, for use as a  
 15 continuing care ~~facility~~ *continuing care retirement*  
 16 *community* and accordingly, the use and transfer of the  
 17 property is subject to the conditions and limitations as to  
 18 use and transfer set forth in Sections 1773 and 1789.4 of the  
 19 Health and Safety Code. This notice is recorded pursuant  
 20 to ~~paragraph (23)~~ of subdivision ~~(a)~~ (x) of Section 1779.4  
 21 of the Health and Safety Code.

22     The real property, which is legally owned by (insert the  
 23 name of the legal owner) and is the subject of the  
 24 statutory limitation to which this notice refers, is more  
 25 particularly described as follows: (Insert the legal  
 26 description and the assessor's parcel number of the real  
 27 property to which this notice applies.)

28     ~~(B)~~  
 29     (2) The notice shall remain in effect until notice of  
 30 release is given by the ~~department~~ *State Department of*  
 31 *Social Services Continuing Care Contract Branch*. The  
 32 ~~department~~ *State Department of Social Services*  
 33 *Continuing Care Contracts Branch* shall execute and  
 34 record a release of the notice upon proof of complete  
 35 performance of all obligations to transferors.

36     ~~(C)~~  
 37     (3) Unless a notice has already been recorded with  
 38 respect to the land on which the *applicant or* provider is  
 39 operating or intends to operate a continuing care ~~facility~~  
 40 *retirement community*, prior to the date of execution of



1 any trust deed, mortgage, or any other lien or  
 2 encumbrance, securing or evidencing the payment of  
 3 money and affecting land on which the *applicant or*  
 4 provider intends to operate a continuing care ~~facility~~  
 5 *retirement community*, the *applicant or* provider shall  
 6 give the department written notice of the proposed  
 7 encumbrance. Upon the giving of notice to the  
 8 department, the *applicant or* provider shall execute and  
 9 record the Notice of Statutory Limitation on Transfer in  
 10 the office of the county recorder in each county in which  
 11 any portion of the continuing care—~~facility~~ *retirement*  
 12 *community* is located.

13 ~~(D)~~  
 14 (4) In the event that the *applicant or* provider and the  
 15 owner of record are not the same entity or individual on  
 16 the date on which execution and recordation of the notice  
 17 is required, the *applicant or* provider shall serve a copy  
 18 of the notice on the owner of record by certified mail.

19 ~~(E)~~  
 20 (5) The notice shall be indexed by the recorder in the  
 21 grantor-grantee index to the name of the owner of record  
 22 and the name of the *applicant or* provider.

23 ~~(24)~~  
 24 (y) A statement that the applicant will keep the  
 25 department informed of any *material* changes to the  
 26 ~~project~~ *proposed continuing care retirement community*  
 27 plan as reflected in the application form and attachments.

28 ~~(25)~~  
 29 (z) Any other information as may be required by the  
 30 department for the proper administration and  
 31 enforcement of this chapter.

32 *SEC. 18. Section 1779.6 of the Health and Safety Code*  
 33 *is amended to read:*

34 1779.6. (a) Within seven calendar days of receipt of  
 35 an initial application for a permit to sell deposit  
 36 subscriptions and certificate of authority, the department  
 37 shall acknowledge receipt of the application in writing.

38 (b) Within—~~20~~ 30 calendar days of receipt of an  
 39 application, the department shall determine if the  
 40 application is complete. This review need not include a



1 review of the adequacy of the documentation submitted.  
2 Based on this review, the department shall do one of the  
3 following:

4 (1) Notify the applicant of additional forms,  
5 documents, information, or materials required to  
6 comprise a complete application and allow the applicant  
7 adequate time to submit the requested information or  
8 materials.

9 (2) Determine that the application is complete as  
10 submitted.

11 (c) Within 120 calendar days ~~from the date~~ *after* the  
12 department determines that an application is complete,  
13 the department shall act to approve the application or  
14 determine the application is ~~incomplete~~ *inadequate*,  
15 notify the applicant of ~~what is required for completeness,~~  
16 ~~and give the applicant an opportunity to submit~~  
17 ~~additional documentation~~ *the specific deficiency and*  
18 *code references and give the applicant an opportunity to*  
19 *respond.*

20 ~~(1) During~~

21 *During* this period, the department shall do all of the  
22 following:

23 ~~(A)~~

24 (1) Review the application for adequacy ~~and~~  
25 ~~completeness.~~

26 ~~(B)~~

27 (2) Review the application for compliance with this  
28 chapter.

29 ~~(C)~~

30 (3) Review the financial plan for feasibility.

31 ~~(D)~~

32 (4) If necessary, request expert consultants to review  
33 portions of the application and advise the department of  
34 their opinions.

35 ~~(E) Prepare a summary of services to be offered or~~  
36 ~~made available to residents of the facility.~~

37 ~~(2) Prior to denying an application for any inadequacy~~  
38 ~~in the application or documentation, the department~~  
39 ~~shall notify the applicant of the specific deficiency and~~  
40 ~~give the applicant an opportunity to respond.~~



1 (d) Within ~~15~~ 30 calendar days ~~of the response from~~  
2 ~~the applicant regarding any inadequacy in the~~  
3 ~~application after its receipt of any additional information~~  
4 ~~or clarification required from the applicant, the~~  
5 ~~department shall respond to the applicant's submission in~~  
6 ~~writing, including its determination whether each~~  
7 ~~specific deficiency has been addressed and whether the~~  
8 ~~application is adequate. If the department determines~~  
9 ~~that the application is adequate and in compliance with~~  
10 ~~this chapter, the department shall act to issue the permit~~  
11 ~~to sell deposit subscriptions and certificate of authority.~~  
12 *If the department determines that the response is*  
13 *inadequate, it may request additional information or*  
14 *clarification from the applicant pursuant to subdivision*  
15 *(c) or to deny the application pursuant to Section 1779.10.*

16 *SEC. 19. Section 1779.8 of the Health and Safety Code*  
17 *is amended to read:*

18 1779.8. (a) The applicant shall notify the department  
19 of *material* changes in the information submitted by the  
20 applicant to the department in the application materials.

21 (b) No less than 60 calendar days prior to an applicant  
22 making any changes in the applicant's corporate name,  
23 structure, organization, operation, or financing, the  
24 applicant shall give written notice of these proposed  
25 changes to the department. This notice requirement does  
26 not apply to mere facility staff changes.

27 (c) Within 30 calendar days after receiving notice of  
28 the proposed change, the department shall inform the  
29 applicant of any additional or amended information  
30 needed to process the pending application, or whether a  
31 new application *and application fee* must be submitted.  
32 *The new application fee shall be twice the actual cost of*  
33 *additional consultant review time caused by the change.*  
34 *This additional fee is payable to the department on*  
35 *demand.*

36 (d) Failure to give written notice of changes required  
37 by this section shall result in suspension of the permit to  
38 sell deposit subscriptions, pending the outcome of an  
39 investigation by the department into the effect of the  
40 changes on the interests of the subscribers.



1 SEC. 20. Section 1779.10 of the Health and Safety  
2 Code is amended to read:

3 1779.10. (a) The department shall deny an  
4 application for a permit to sell deposit subscriptions and  
5 certificate of authority if any of the following exists:

6 (1) Failure to pay the application fee as required by  
7 Section 1779.2.

8 (2) Failure to submit all information required by this  
9 chapter.

10 (3) Failure to submit evidence to support a reasonable  
11 belief that any principal of the ~~project~~ *proposed*  
12 *continuing care retirement community* who has  
13 committed any offenses listed in ~~paragraph (8)~~ of  
14 subdivision ~~(a)~~ *(i)* of Section 1779.4 is of such good  
15 character to indicate rehabilitation.

16 (4) If an action specified in ~~paragraph (7)~~ of  
17 subdivision ~~(a)~~ *subdivisions (h) and (j)* of Section 1779.4  
18 and subparagraph ~~(G)~~ of paragraph ~~(9)~~ of subdivision ~~(a)~~  
19 ~~(j)~~ of Section 1779.4 has been taken against an applicant  
20 and the applicant has failed to submit evidence to support  
21 a reasonable belief that the applicant is capable of  
22 administering the ~~project~~ *continuing care retirement*  
23 *community* in compliance with applicable laws and  
24 regulations.

25 (5) Failure to demonstrate the feasibility of the  
26 proposed ~~project~~ *continuing care retirement community*  
27 plan.

28 (b) If the application is denied, the previously paid  
29 application fee shall not be refunded.

30 (c) Immediately upon the denial of an application, the  
31 department shall notify the applicant in writing.

32 (d) The Notice of Denial from the department shall  
33 contain all of the following:

34 (1) State that the application is denied.

35 (2) List the reasons for the denial.

36 (3) Explain the right of appeal.

37 (4) State that the applicant has 30 calendar days from  
38 the date that the Notice of Denial was mailed to appeal  
39 the denial, and where to send the appeal.



1 (e) If the applicant appeals the denial, further  
2 proceedings shall be conducted in accordance with  
3 Chapter 5 (commencing with Section 11500) of Part 1 of  
4 Division 3 of Title 2 of the Government Code.

5 *SEC. 21. Section 1780 of the Health and Safety Code*  
6 *is amended to read:*

7 1780. ~~(a)~~The department shall issue a permit to sell  
8 deposit subscriptions when ~~all requirements therefor~~  
9 ~~have been met it has:~~

10 (a) *Determined that the application is complete.*

11 (b) *Determined that the proposed continuing care*  
12 *retirement community marketing and feasibility plans*  
13 *are acceptable.*

14 (c) *Reviewed and approved the deposit subscription*  
15 *agreement.*

16 (d) *Reviewed and approved the escrow agreement.*

17 ~~(b) The permit to sell deposit subscriptions shall be~~  
18 ~~valid for 60 months, until revoked, or until a provisional~~  
19 ~~certificate of authority is issued.~~

20 ~~(c) The holder of a permit to sell deposit subscriptions~~  
21 ~~shall comply with all of these requirements.~~

22 *SEC. 22. Section 1780.2 of the Health and Safety Code*  
23 *is amended to read:*

24 1780.2. (a) A deposit subscription may be made in  
25 one or several payments, to begin at the time the parties  
26 enter into the deposit subscription agreement.

27 A deposit subscription shall be paid by ~~check, draft, or~~  
28 ~~money order, cash or cash equivalent, jointly payable to~~  
29 the applicant and the escrow agent. *Possession and*  
30 *control of any such instrument must be transferred to the*  
31 *escrow agent at the time the deposit is paid.*

32 (b) A processing fee may be added to the deposit  
33 subscription.

34 (1) The processing fee shall not exceed one percent of  
35 the amount of the average entrance fee.

36 (2) ~~The~~ *A nonrefundable* processing fee may be paid  
37 directly to the applicant *without being placed in the*  
38 *escrow account.*

39 (c) Payments made to the applicant from a subscriber  
40 for upgrades or modifications to the living unit shall not



1 be placed in escrow with deposit subscriptions. Written  
2 refund policies shall be given to the subscriber.

3 *SEC. 23. Section 1780.4 of the Health and Safety Code*  
4 *is amended to read:*

5 1780.4. (a) All deposit subscription agreements  
6 entered into between the applicant and the subscriber  
7 shall be in writing and shall contain all information  
8 required by this section.

9 (b) All deposit subscription agreement forms shall be  
10 approved by the department prior to their use.

11 (c) The requirements of this chapter and Chapter 3.2  
12 (commencing with Section 1569) shall be the bases for  
13 approval of the forms by the department.

14 (d) All text in deposit subscription agreement forms  
15 shall be printed in at least 10-point ~~boldface type to~~  
16 ~~highlight terms and conditions as required~~ *typeface*.

17 (e) The deposit subscription agreement form shall  
18 provide for all of the following:

19 (1) An estimated date for completion of the ~~project~~  
20 *proposed continuing care retirement community or each*  
21 *phase, if applicable*, not to exceed 60 months from the  
22 date the permit to sell deposit subscriptions is issued.

23 (2) Identification of the specific unit subscribed to and  
24 the total deposit subscription for that unit.

25 (3) Processing fee terms and conditions, including:

26 (A) The amount, ~~which shall be subject to approval by~~  
27 ~~the department~~.

28 (B) A statement explaining the applicant's policy  
29 regarding refund or retention of the processing fee in the  
30 event of death of the subscriber or voluntary cancellation  
31 by the subscriber.

32 (C) Notice that the processing fee shall be refunded  
33 within 30 days, in the event that the subscriber is not  
34 accepted for ~~occupancy residency~~, or if the ~~facility~~  
35 *continuing care retirement community* is not  
36 constructed by the estimated date of completion and the  
37 department determines that there is no satisfactory cause  
38 for the delay.

39 (4) Requirements for payment of the deposit  
40 subscription by the subscriber.



1 (5) Refund of the deposit subscription within 30  
2 calendar days of notice of death of the subscriber or his  
3 or her nonacceptance for residency.

4 (6) Refund of the deposit subscription within 10  
5 calendar days of notice of voluntary cancellation by the  
6 subscriber. However, once construction begins and until  
7 ~~the facility~~ *continuing care retirement community* is in  
8 operation, refunds shall be made only after another  
9 subscriber has reserved the specific unit and paid the  
10 necessary deposit subscription, or the subscriber no  
11 longer meets financial or health requirements for  
12 admission, *whichever occurs first*.

13 (7) A statement to subscribers that specifies when  
14 funds may be released from escrow and explains that  
15 thereafter subscriber funds will not have escrow  
16 protection and that any refunds *during construction* will  
17 come solely from the resale of their specific unit.

18 (8) A statement regarding whether interest will be  
19 paid to the subscriber on deposit subscription funds  
20 placed in an escrow account.

21 *(f) A schedule of projected monthly care fees*  
22 *estimated to be charged to residents for each of the first*  
23 *five years of the facility's existence shall be attached to*  
24 *each deposit subscription agreement. The schedule shall*  
25 *contain a conspicuous statement in at least 10-point*  
26 *boldface type that the projected fees are an estimate only*  
27 *and, prior to execution of a continuing care contract, may*  
28 *be changed without notice.*

29 *SEC. 24. Section 1781 of the Health and Safety Code*  
30 *is amended to read:*

31 1781. (a) All deposit subscriptions, excluding  
32 ~~reasonable processing fees to cover costs~~, shall be placed  
33 in an escrow account, the terms of which must be  
34 approved in advance by the department.

35 (b) The escrow account shall be established ~~in a~~  
36 ~~California bank, California savings and loan association,~~  
37 ~~or California trust company acceptable to~~ *by an escrow*  
38 *agent and the deposit subscription deposited in a*  
39 *depository approved by the department and located in*  
40 *California*. The funds deposited therein shall be kept and



1 maintained in an account separate and apart from the  
2 applicant's business accounts.

3 (c) Funds shall remain in escrow until the department  
4 has authorized their release in accordance with Section  
5 1783.2.

6 ~~(d) Deposit subscriptions placed in escrow accounts~~  
7 ~~shall be placed in a custodial account under the control~~  
8 ~~of the escrow department of a bank acceptable to the~~  
9 ~~department and invested in instruments guaranteed by,~~  
10 ~~or agencies of, the federal government or by investment~~  
11 ~~funds secured by federally guaranteed instruments.~~

12 (e) No funds deposited in an escrow account shall be  
13 subject to any liens, ~~or charges by the escrow agent or~~  
14 ~~judgments, garnishments, or creditor's claims against the~~  
15 ~~provider applicant or facility continuing care retirement~~  
16 ~~community. Neither shall these funds be subject to any~~  
17 ~~liens or charges by the escrow agent, except transaction~~  
18 ~~fees, commissions, prepayment penalties, and other fees~~  
19 ~~incurred in connection with the payment of cash~~  
20 ~~equivalent deposit subscriptions.~~

21 *SEC. 25. Section 1781.2 of the Health and Safety Code*  
22 *is amended to read:*

23 1781.2. (a) Payments pursuant to deposit  
24 subscriptions shall be deposited with the escrow agent  
25 within five business days after their receipt from  
26 subscribers and shall be accounted for ~~separately by the~~  
27 ~~applicant in a separate escrow account.~~

28 **Deposits**

29 (b) *Deposits* shall be accompanied by a copy of the  
30 executed deposit subscription agreement, a copy of the  
31 receipt given to the subscriber, a summary of all deposits  
32 made on that date, and any requirement of the escrow  
33 holder.

34 *SEC. 26. Section 1781.4 of the Health and Safety Code*  
35 *is amended to read:*

36 1781.4. ~~(a)~~ The escrow agreement *between the*  
37 *applicant and the escrow agent* shall provide for all of the  
38 following:

39 ~~(1)~~



- 1 (a) The amount of the processing fee, ~~which is to be~~  
2 ~~excluded from the escrow account, if the processing fee~~  
3 ~~is paid with the deposit.~~  
4 ~~(2)–~~  
5 (b) Deposit of funds in the escrow account.  
6 ~~(3)–~~  
7 (c) Monthly progress reports, beginning the month  
8 after the escrow account is opened and ending after funds  
9 are released from escrow, ~~shall~~ to be sent by the escrow  
10 agent directly to the department. These reports shall  
11 show ~~all~~ *each* of the following *in separate columns*:  
12 ~~(i)–~~  
13 (1) The name and address of each subscriber or  
14 resident.  
15 ~~(ii)–~~  
16 (2) The designation of the living unit being provided.  
17 ~~(iii)–~~ The  
18 (3) *Any processing fee which is deposited into escrow.*  
19 (4) *The total deposit subscription for the unit.*  
20 ~~(iv) Amounts deposited or refunded (in a separate~~  
21 ~~column for each payment prescribed in the deposit~~  
22 ~~subscription agreement).~~  
23 ~~(v)–~~ The  
24 (5) *The total entrance fee for the unit.*  
25 (6) *Twenty percent of the total entrance fee.*  
26 (7) *Each payment made towards the deposit or refund*  
27 *given.*  
28 (8) *The unpaid balance of—*the *each* deposit  
29 subscription.  
30 ~~(vi)–~~ The  
31 (9) *The unpaid balance of each entrance fee.*  
32 (10) *The current balance in the escrow account.*  
33 (11) *The dollar amount, type, and maturity date of any*  
34 *cash equivalent.*  
35 ~~(4)–~~  
36 (d) Investment of escrow account funds.  
37 ~~(5)–~~  
38 (e) Release of escrow account funds as specified in  
39 Section 1783.2, including to whom payment of interest  
40 earned on such funds will be made.

1 ~~(b)~~  
 2 (f) The escrow agreement shall state that the escrow  
 3 agent for the ~~project~~ *proposed continuing care*  
 4 *retirement community* shall neither be a lender nor have  
 5 fiduciary responsibilities to lenders or bondholders for  
 6 that ~~project~~ *continuing care retirement community*.

7 *SEC. 27. Section 1781.8 of the Health and Safety Code*  
 8 *is amended to read:*

9 1781.8. (a) As instructed by the applicant, funds  
 10 placed in escrow accounts may be invested as provided  
 11 under subdivision (d) of Section 1781.

12 (b) Earnings shall not be released except upon  
 13 approval of the department.

14 (c) Approval by the department of the release of  
 15 earnings from funds in escrow shall be based upon an  
 16 assessment that funds remaining in the escrow account  
 17 will be sufficient to pay refunds and interest promised, if  
 18 any, to all subscribers, and all escrow agent administrative  
 19 costs.

20 (d) Interest shall be distributed in accordance with the  
 21 terms of the ~~escrow~~ *deposit subscription* agreement.

22 *SEC. 28. Section 1782 of the Health and Safety Code*  
 23 *is amended to read:*

24 1782. (a) An applicant shall not begin construction of  
 25 a continuing care ~~facility~~ *retirement community* ~~or~~  
 26 ~~prospective continuing care facility~~ without the written  
 27 acknowledgment of the department that all of the  
 28 following prerequisites have been met:

29 (1) A completed application has been submitted to the  
 30 department.

31 (2) A permit to sell deposit subscriptions has been  
 32 issued.

33 (3) At least 20 percent of each applicable entrance fee  
 34 has been received for at least ~~60~~ 50 percent of the number  
 35 of ~~market test residential living~~ units ~~projected to be~~  
 36 ~~occupied six months after the facility has opened for~~  
 37 ~~operation~~ *to be constructed*.

38 (b) Applicants shall notify subscribers in writing of the  
 39 commencement of construction.



1 (c) For purposes of this chapter only, construction  
2 shall not include site preparation or demolition.

3 SEC. 29. Section 1783 of the Health and Safety Code  
4 is amended to read:

5 1783. (a) No building, which has been constructed by  
6 the applicant or related parties without prior written  
7 approval of the department for commencement of  
8 construction, shall be permitted to be converted to a  
9 continuing care ~~facility~~ retirement community until five  
10 years have elapsed from the completion of construction.  
11 This section shall not apply to expansions of existing  
12 continuing care retirement communities.

13 (b) If existing buildings are to be converted to a  
14 continuing care use, ~~no deposit subscription shall be~~  
15 ~~received by an applicant unless the applicant has agreed~~  
16 ~~to keep deposit subscriptions in escrow until the~~  
17 ~~requirements of Section 1786 have been met~~ the  
18 applicant shall comply with all application requirements  
19 necessary to assess the feasibility of the proposed  
20 continuing care retirement community as determined by  
21 the department pursuant to Section 1779.4; provided,  
22 however, that the department may waive or modify the  
23 presales requirements of subparagraphs (A) and (B) of  
24 paragraph (1) of subdivision (a) of Section 1783.2 and  
25 paragraph (2) of subdivision (a) of Section 1786 if the  
26 facility is already occupied. This section shall not apply to  
27 expansions of existing continuing care ~~facilities~~  
28 retirement communities.

29 (c) Any entity applying for conversion to a continuing  
30 care retirement community unless qualified for a waiver  
31 or modification pursuant to subdivision (b), shall indicate  
32 the portion of the facility to be used for continuing care  
33 contracts. The continuing care allocation shall be used to  
34 determine the percentages in meeting requirements of  
35 the deposit subscription period pursuant to subdivision  
36 (b) of Section 1783.2 and Section 1786.

37 SEC. 30. Section 1783.2 of the Health and Safety Code  
38 is amended to read:

39 1783.2. (a) Refunds to subscribers shall be disbursed  
40 as follows:



1 (1) Except as provided in paragraph (2), the escrow  
2 agent shall pay refunds to subscribers who cancel a  
3 deposit subscription agreement, upon written notice to  
4 the escrow agent from the applicant, in accordance with  
5 the approved deposit subscription agreement. These  
6 refunds shall be paid within 10 days after the subscriber  
7 gives notice to the applicant.

8 (2) After notice to subscribers of commencement of  
9 construction, a subscriber shall not be entitled to a refund  
10 of deposit subscriptions until the ~~facility~~ *continuing care*  
11 *retirement community* is opened for operation, another  
12 subscriber has reserved the specific residential unit and  
13 paid the necessary deposit subscription, or the subscriber  
14 no longer meets financial or health requirements for  
15 admission, whichever occurs first.

16 (b) Releases to applicants shall be as follows:

17 ~~The department shall instruct the escrow agent to~~  
18 ~~release to the applicant all deposit subscriptions, which~~  
19 ~~have been placed in escrow pursuant to Section 1781~~  
20 ~~when all of the following requirements have been met:~~

21 (1) *The applicant shall petition in writing to the*  
22 *department for the release of escrow, attesting to all of*  
23 *the following:*

24 (A) *The construction of the ~~facility~~ continuing care*  
25 *retirement community is at least 50 percent completed*  
26 ~~and at~~

27 (B) *At least 20 percent of the total of each applicable*  
28 *entrance fee has been received and placed in escrow for*  
29 *at least 60 percent of the total number of ~~market test~~*  
30 *residential living units, which have been reserved and are*  
31 *not awaiting refunds.*

32 (C) *All deposit subscriptions where considerations*  
33 *were paid by cash equivalents have been liquidated.*

34 (2)

35 (D) *The applicant's average performance over any*  
36 *six-month period substantially equals or exceeds its*  
37 *financial and marketing projections approved by the*  
38 *department, for that period.*

39 (E) *The applicant has received a commitment for any*  
40 *permanent mortgage loan or other long-term financing.*



1 (2) *The department shall instruct the escrow agent to*  
2 *release to the applicant all deposit subscriptions, which*  
3 *have been placed in escrow pursuant to Section 1781*  
4 *when all of the following requirements have been met:*

5 (A) *The department has confirmed the information*  
6 *provided by the applicant pursuant to paragraph (1) of*  
7 *subdivision (b).*

8 ~~(3)~~

9 (B) *The department, in consultation with the*  
10 ~~Committee on Continuing Care Contracts Committee,~~  
11 *has determined that there has been substantial*  
12 *compliance with projected annual financial statements,*  
13 *which served as a basis for issuance of the permit to sell*  
14 *deposit subscriptions.*

15 ~~(4)~~

16 (C) *The applicant has complied ~~Compliance~~ with all*  
17 *applicable licensing requirements in a timely manner.*

18 ~~(5) A~~

19 (D) *The applicant has obtained a commitment*  
20 ~~satisfactory to the department has been received by the~~  
21 ~~applicant~~ *for any permanent mortgage loan or other*  
22 *long-term financing that is satisfactory to the*  
23 *department.*

24 ~~(6)~~

25 (E) *The applicant has complied ~~Compliance~~ with any*  
26 *additional reasonable requirements for release of funds*  
27 *placed in escrow accounts, established by the department*  
28 *pursuant to Section 1785.*

29 *SEC. 31. Section 1784 of the Health and Safety Code*  
30 *is amended to read:*

31 1784. (a) *If construction of the ~~project~~ proposed*  
32 *continuing care retirement community, or applicable*  
33 *phase, is ~~has not completed~~ commenced within 60 36*  
34 *months from the date the permit to sell deposit*  
35 *subscriptions is issued, an applicant may request an*  
36 *extension of the permit to sell deposit subscriptions. The*  
37 *request for extension shall be made to the department in*  
38 *writing and shall ~~state~~ include the reasons why*  
39 *construction of the ~~project~~ proposed continuing care*  
40 *retirement community was not ~~completed~~ commenced*



1 within the ~~60-month~~ *36-month* time period, and the new  
2 estimated date for ~~completion~~ *commencement* of  
3 *construction*.

4 (b) ~~If the project is not completed within 60 months~~  
5 ~~from the date the permit to sell deposit subscriptions is~~  
6 ~~issued, the department may do either of the following~~ *In*  
7 *response to a request for an extension, the department*  
8 *may do one of the following:*

9 (1) If the department determines there is satisfactory  
10 cause for the delay in ~~completion~~ *commencement* of  
11 *construction* of the ~~project~~ *proposed continuing care*  
12 *retirement community*, the department may extend the  
13 permit to sell deposit subscriptions for ~~any reasonable~~  
14 *time a one-year period*.

15 (2) If the department determines that there is no  
16 satisfactory cause for the delay, the department may  
17 instruct the escrow agent to refund to subscribers all  
18 deposit subscriptions held in escrow, plus any interest due  
19 under the terms of the deposit subscription agreements  
20 *and require the applicant to file a new application and*  
21 *application fee*.

22 (c) ~~The~~ *Within 10 calendar days the* applicant shall  
23 notify each subscriber of ~~any extensions of the date of~~  
24 ~~completion of the project beyond the date specified in the~~  
25 ~~agreement, the department's approval or denial of the~~  
26 *extension*, of any expiration of the permit to sell deposit  
27 subscriptions, and of any right to a refund of their deposit  
28 subscription.

29 *SEC. 32. Section 1785 of the Health and Safety Code*  
30 *is amended to read:*

31 1785. (a) If, at any time prior to issuance of a  
32 certificate of authority, the applicant's average  
33 performance over any six-month period does not  
34 substantially equal or exceed the applicant's projections  
35 for that period, the department, after consultation and  
36 upon consideration of the recommendations of the  
37 ~~Committee on~~ *Continuing Care Contracts Committee*,  
38 may take any of the following actions:

39 (1) Cancel the permit to sell deposit subscriptions.



1 (2) Increase the required percentages of construction  
2 completed, units reserved, or entrance fees to be  
3 deposited as required under Sections 1782, 1783.2, 1786,  
4 and 1786.2.

5 (3) Increase the reserve requirements under this  
6 chapter.

7 (b) Prior to taking any actions specified in subdivision  
8 (a), the department shall give the applicant an  
9 opportunity to submit a feasibility study from a consultant  
10 in the area of continuing care, approved by the  
11 department, to determine whether in his or her opinion  
12 the ~~project~~ *proposed continuing care retirement*  
13 *community* is still viable, and if so, to submit a plan of  
14 correction. The department, in consultation with the  
15 committee, shall determine if the plan is acceptable.

16 (c) In making its determination, the department shall  
17 take into consideration the overall performance of the  
18 ~~project~~ *proposed continuing care retirement community*  
19 to date.

20 (d) If ~~consideration~~ *has deposit subscriptions have*  
21 been released from escrow, the department may further  
22 require the applicant to reopen the escrow as a condition  
23 of receiving any further entrance fee payments from  
24 subscribers or residents.

25 *SEC. 33. Section 1786 of the Health and Safety Code*  
26 *is amended to read:*

27 1786. (a) In order to permit an applicant to *become*  
28 *a provider and* enter into continuing care contracts ~~and~~  
29 ~~meet the requirements of paragraph (2)~~, the department  
30 shall issue a provisional certificate of authority when a  
31 provider has done all of the following:

32 (1) *Complied with the approved marketing plans.*

33 (2) Met and continues to meet the requirements of  
34 *imposed under subdivision (b) of Section 1783.2. The*  
35 *issuance of the provisional certificate of authority does*  
36 *not result in the automatic release of escrowed funds*  
37 *pursuant to Section 1783.2.*

38 ~~(2)~~

39 (3) Completed construction of the ~~facility~~ *continuing*  
40 *care retirement community* or applicable phase.



1     ~~(3)~~  
 2     (4) Obtained the required licenses.  
 3     ~~(4) Complied with the approved marketing plans.~~  
 4     (5) Paid the remainder of the application fees.  
 5     (6) Executed a permanent mortgage loan or other  
 6 long-term financing.  
 7     (7) Met all applicable provisions of this chapter.  
 8     (b) The provisional certificate of authority shall ~~be~~  
 9 ~~valid for a period of~~ *expire* 12 months after issuance.  
 10 *unless the following occur:*  
 11     (1) *Sixty days prior to the expiration of the provisional*  
 12 *certificate of authority, the provider petitions the*  
 13 *department in writing for an extension of the provisional*  
 14 *certificate of authority.*  
 15     (2) Upon a showing of good cause by the provider, the  
 16 department ~~may extend a provisional certificate of~~  
 17 ~~authority for a period not to exceed 12 months, if it~~  
 18 ~~appears to the department~~ *determines* that the applicant  
 19 is capable of meeting the requirements of Section 1786.2  
 20 during the period of extension.  
 21     ~~(c) All holders of a provisional certificate of authority~~  
 22 ~~shall comply with all requirements of this chapter. The~~  
 23 ~~length of the period of extension shall be determined at~~  
 24 ~~the department's discretion.~~  
 25     (d) *After the provisional certificate of authority is*  
 26 *issued providers may continue to take deposits by*  
 27 *modifying the deposit subscription agreement. The new*  
 28 *deposit agreement shall clearly state the rights of the*  
 29 *depositor and the provider. These agreements shall be*  
 30 *submitted to the department for review and approval*  
 31 *prior to use.*  
 32     (e) All holders of a provisional certificate of authority  
 33 shall request in writing a final certificate of authority  
 34 when the requirements of Section 1786.2 have been met.  
 35     *SEC. 34. Section 1786.2 of the Health and Safety Code*  
 36 *is amended to read:*  
 37     1786.2. (a) A certificate of authority shall not be  
 38 issued to a provider, unless the department determines  
 39 that all of the following have occurred:



1 (1) A provisional certificate of authority has been  
2 issued.

3 (2) One of the following requirements has been met:

4 (A) At a minimum, *continuing care* contracts have  
5 been executed for 80 percent of the total ~~market-test~~  
6 *residential living* units in the ~~facility~~ *continuing care*  
7 *retirement community*, with payment in full of the  
8 entrance fee.

9 (B) At a minimum, *continuing care* contracts have  
10 been executed for 70 percent of the total ~~market-test~~  
11 *residential living* units in the ~~facility~~ *continuing care*  
12 *retirement community*, with payment in full of the  
13 entrance fee, and the provider has submitted a financial  
14 and marketing plan, satisfactory to the department,  
15 demonstrating that the ~~project~~ *proposed continuing care*  
16 *retirement community* will be financially viable.

17 (C) At a minimum, *continuing care* contracts have  
18 been executed for 50 percent of the total ~~market-test~~  
19 *residential living* units in the ~~facility~~ *continuing care*  
20 *retirement community*, with payment in full of the  
21 entrance fee, and the provider furnishes *and maintains* a  
22 letter of credit or other security, satisfactory to the  
23 department, sufficient to bring the total amount of  
24 payments to a level equivalent to 80 percent of the total  
25 entrance fees for the entire ~~facility~~ *continuing care*  
26 *retirement community*.

27 (3) A minimum ~~5-year~~ *five-year* financial plan of  
28 operation remains satisfactory to the department.

29 (4) Adequate reserves exist as required by Sections  
30 1792.2 and 1793. For a new ~~facility~~ *continuing care*  
31 *retirement community* without an operating history, the  
32 department may approve calculation of required  
33 reserves on a pro forma basis in conjunction with  
34 compliance with approved marketing plans.

35 (5) All applicable provisions of this chapter have been  
36 met.

37 (b) When issued, the certificate of authority, *whether*  
38 *full or conditioned*, shall remain in full force unless  
39 *inactivated*, suspended, ~~limited~~, or revoked by the  
40 department pursuant to Section ~~1794.16~~ *1794.20*.



1 (c) *The certificate of authority shall be displayed in a*  
2 *prominent place within the continuing care retirement*  
3 *community.*

4 *SEC. 35. Section 1787 of the Health and Safety Code*  
5 *is amended to read:*

6 1787. (a) All continuing care contracts entered into  
7 between the provider and the transferor shall be in  
8 writing and shall contain all information required by  
9 Section 1788.

10 (b) All continuing care contract forms, *addenda,*  
11 *exhibits, or any other related documents, and any*  
12 *revisions thereto,* shall be approved by the department  
13 prior to their use.

14 (c) The requirements of this chapter and Chapter 3.2  
15 (commencing with Section 1569) shall be the bases for  
16 approval by the department.

17 (d) The *continuing care* contract shall constitute the  
18 full and complete agreement between the parties.

19 (e) More than one *continuing care* contract form may  
20 be used if multiple program options are available.

21 (f) All text in *continuing care* contract forms shall be  
22 printed in at least 10-point ~~boldface type to highlight~~  
23 ~~terms and conditions as required~~ *typeface.*

24 (g) A clearly legible copy of the continuing care  
25 contract, ~~with no blank spaces,~~ executed by the provider  
26 and a transferor, shall be furnished, with all required or  
27 included attachments to the transferor at the time the  
28 continuing care contract is executed and shall be  
29 furnished within 10 calendar days to the resident if the  
30 resident is other than the transferor.

31 (h) The provider shall require a written  
32 acknowledgment from the transferor (and the resident,  
33 if other than the transferor) that the executed copy of the  
34 *continuing care* contract and attachments have been  
35 received.

36 (i) The continuing care contract shall constitute an  
37 admissions agreement for purposes of the residential care  
38 facility for the elderly and long-term health care facility  
39 requirements. ~~Continuing~~ *The continuing care contract*  
40 *may state the entitlement for skilled nursing care in*



1 *accordance with the provisions of law governing*  
2 *admissions to long-term health care facilities in effect at*  
3 *the time of admission to the skilled nursing facility. The*  
4 *parties may agree to the terms of nursing facility*  
5 *admission at the time the continuing care contract is*  
6 *executed, or the provider may present an exemplar of the*  
7 *then-current nursing facility admission agreement and*  
8 *require the resident to execute the form of agreement in*  
9 *effect at the time of admission to the nursing facility.*  
10 *These terms shall include the nursing fee, or the method*  
11 *of determining the fee, at the time of the execution of the*  
12 *continuing care agreement, the services included in and*  
13 *excluded from the fee, the grounds for transfers and*  
14 *discharges, and any other terms required to be included*  
15 *under federal law.*

16 *(j) Only the skilled nursing admission agreement*  
17 *sections of continuing care contracts which cover*  
18 *long-term health care facility services shall not be subject*  
19 *to Chapter 3.95 (commencing with Section 1599.60). The*  
20 *provider must submit the proposed skilled nursing*  
21 *admission agreement to the State Department of Health*  
22 *Services for its review and to the State Department of*  
23 *Social Services for review to determine that it is not in*  
24 *violation of the laws relating to continuing care contracts.*

25 *SEC. 36. Section 1788 of the Health and Safety Code*  
26 *is amended to read:*

27 1788. (a) Any continuing care contract shall contain  
28 all of the following:

29 (1) The legal name and address of the provider.

30 (2) The name and address of the ~~facility~~ *continuing*  
31 *care retirement community.*

32 (3) The resident's name and ~~address~~ *number of the*  
33 *unit to be occupied.*

34 (4) If the transferor is someone other than the  
35 resident, the transferor's name and address shall be  
36 separately designated.

37 (5) If the provider has used the name of any charitable  
38 or religious or nonprofit organization in its title before  
39 January 1, 1979, and continues to use that name, and that  
40 organization is not responsible for the financial and



1 contractual obligations of the provider, the provider shall  
2 include in every continuing care contract a conspicuous  
3 statement which clearly informs the transferor that the  
4 organization is not financially responsible.

5 (6) The date the *continuing care* contract is signed by  
6 the transferor.

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

8 (8) A list of the ~~basic services to be provided~~ *following*  
9 *services that are to be made available to the resident,*  
10 *which shall include at a minimum, the following*  
11 *conditions for residential care facility for the elderly*  
12 *licensure:*

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

16 (B) *Safe and healthful living accommodations,*  
17 *including housekeeping services and utilities.*

18 (C) *Maintenance of house rules for the protection of*  
19 *residents.*

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

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

26 (F) *Personal care.*

27 (G) *Assistance with taking medications.*

28 (H) *Central storing and distribution of medications.*

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

31 (9) ~~A list of all basic services for which charges in~~  
32 ~~excess of the monthly fee will be made and the fees at the~~  
33 ~~date of the contract for those services~~ *An itemization of*  
34 *the services that are included in the monthly fee and the*  
35 *services that are available at an extra charge. The*  
36 *provider shall attach a current fee schedule to the*  
37 *continuing care contract.*

38 (10) The procedures and conditions under which  
39 residents may be voluntarily or involuntarily transferred  
40 from their designated living units. The transfer



1 procedures, at a minimum, shall provide for all of the  
2 following:

3 (A) When, in the opinion of, at a minimum, the ~~facility~~  
4 *continuing care retirement community* management, a  
5 physician and surgeon, appropriate specialist, or licensing  
6 official, any of the following conditions exist:

7 (i) The resident is nonambulatory. The definition of  
8 nonambulatory, as defined in Section 13131, shall either  
9 be stated in the *continuing care* contract or be cited, with  
10 a copy of it made available, as an attachment or by  
11 specifying that it will be provided upon request. If the  
12 resident occupies a room that has a fire clearance for  
13 nonambulatory residence, provision for transfer under  
14 the above circumstances is unnecessary.

15 (ii) Resident ~~becomes mentally ill~~ *develops a physical*  
16 *or mental condition that endangers the health, safety, or*  
17 *well-being of the resident or another person, or causes an*  
18 *unreasonable and ongoing disturbance at the continuing*  
19 *care retirement community.*

20 (iii) Transfer to the ~~facility's~~ *continuing care*  
21 *retirement community's* skilled nursing facility or  
22 personal care unit is required for more efficient care  
23 and/or to protect the health of other residents, or because  
24 the level of care needed cannot lawfully be provided in  
25 the living unit.

26 (iv) Transfer to a nursing home or hospital *or other*  
27 *facility* is required and the provider has no facilities  
28 available for such care.

29 (B) Provision for transfer of a second resident when a  
30 shared accommodation arrangement is terminated.

31 (C) When transfer is requested or required, *by*  
32 *provider or resident*, for any other reason.

33 (11) Provisions for any change in the monthly rate and  
34 any refund of entrance fees when a resident transfers  
35 from any unit.

36 (12) ~~The~~ *Any continuing* obligations of the provider in  
37 the event a resident is transferred.

38 (13) Whether the provider has any responsibility to  
39 resume care *after a temporary transfer.*



1 (14) The obligations of the provider for *continued*  
2 services ~~provided to the resident~~ while the resident is  
3 absent from the ~~facility~~ *continuing care retirement*  
4 *community*.

5 (15) The conditions under which the resident  
6 permanently releases his or her living unit.

7 (16) ~~At~~ *If* real and personal properties *are* transferred;  
8 *in lieu of cash, a statement as to* their value at the time of  
9 transfer, and how the value was ascertained *shall be*  
10 *included*.

11 (A) An itemized receipt which includes the  
12 information described above is acceptable, if  
13 incorporated as a part of the *continuing care* contract.

14 (B) With respect to the transfer of real property, a  
15 statement that the deed or other instrument of  
16 conveyance shall contain a recital that the transaction is  
17 made pursuant to a “continuing care contract” and may  
18 be subject to rescission by the transferor within 90 days  
19 from the date of the transfer.

20 (C) The failure to comply with this paragraph (16)  
21 shall not affect the validity of title to real property  
22 transferred pursuant to this chapter.

23 (17) The amount of the entrance fee.

24 (18) In the event two parties have jointly paid the  
25 entrance fee or other payment which allows them to  
26 occupy the unit, the *continuing care* contract shall define  
27 the allocation of fees.

28 (19) The amount of any processing fee.

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

30 (21) For *continuing care* contracts which require a  
31 monthly care fee or other periodic rate, the *continuing*  
32 *care* contract shall provide statements concerning all of  
33 the following:

34 (A) That the occupancy and use of the  
35 accommodations by the resident is contingent upon the  
36 regular payment of the fee.

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

39 (C) Whether payment will be made in advance or  
40 after services have been provided.



1 (D) Whether any adjustment in the monthly care fees  
2 is to be made by the provider for the support,  
3 maintenance, board, or lodging, which is supplied to a  
4 resident who requires medical attention when he or she  
5 is absent from the ~~facility~~ *continuing care retirement*  
6 *community*.

7 (E) If any credit or allowance is to be given to a  
8 resident who is absent from the ~~facility~~ *continuing care*  
9 *retirement community* or from meals, and if such credit  
10 is to be permitted at the discretion or by special  
11 permission of the provider.

12 (22) All *continuing care* contracts shall specify one of  
13 the following basic methods for calculating changes in  
14 monthly care fees:

15 (A) For prepaid *continuing care* contracts, which  
16 include monthly care fees, one of the following methods:

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

19 (ii) Fees shall not be increased by more than a  
20 specified number of dollars in any one year and not more  
21 than a specified number of dollars during the lifetime of  
22 the agreement.

23 (iii) Fees shall not be increased in excess of a specified  
24 percentage over the preceding year and not more than  
25 a specified percentage during the lifetime of the  
26 agreement.

27 (B) For monthly fee *continuing care* contracts, *except*  
28 *prepaid contracts*, changes in monthly fees shall be based  
29 on projected costs, prior year per capita costs, and  
30 economic indicators.

31 (23) The *continuing care* contract shall provide for  
32 notification of the resident at least 30 days in advance of  
33 any change in the scope or price of any component of care  
34 or other services.

35 (24) The *continuing care* contract shall include a  
36 provision indicating whether the resident's rights under  
37 the *continuing care* contract include any proprietary  
38 interests in the assets of the provider or in the ~~facility~~  
39 *continuing care retirement community*, or both.



1 (25) If there is a loan on the property, the *continuing*  
2 *care* contract shall advise residents that rights they may  
3 have to enforce continuing care contracts are  
4 subordinate to the rights of the lender. *For equity*  
5 *projects, the continuing care contract shall specify the*  
6 *type and extent of the equity interest and whether any*  
7 *entity holds a superior security interest.*

8 (26) Notice that the living units are *part of a*  
9 *continuing care retirement community that is* licensed as  
10 *a residential care facilities facility* for the elderly and, as  
11 such, any duly authorized agent of the department may,  
12 upon proper identification and upon stating the purpose  
13 of his or her visit, enter and inspect the entire premises  
14 at any time, without advance notice.

15 (27) A conspicuous statement, in at least 10-point  
16 boldface type in immediate proximity to the space  
17 reserved for the signature of the transferor, that provides  
18 as follows: “You, the transferor, may cancel the  
19 transaction without cause at any time within 90 days from  
20 the date of this transaction. See the attached notice of  
21 cancellation form for an explanation of this right.”

22 (28) Notice that during the cancellation period, the  
23 *continuing care* contract may be cancelled by the  
24 provider without cause.

25 (29) The terms and conditions under which the  
26 *continuing care* contract may be terminated after the  
27 cancellation period by either party, including any health  
28 or financial conditions.

29 (30) A statement that involuntary termination of the  
30 ~~resident continuing care contract~~ by the provider after  
31 the cancellation period shall be only for good and  
32 sufficient cause. ~~Good and sufficient cause does not~~  
33 ~~include participation in a residents’ coalition, or~~  
34 ~~contacting or filing a complaint with the State~~  
35 ~~Department of Social Services or any other state, county,~~  
36 ~~or city agency, or any office of an elected or appointed~~  
37 ~~government official.~~

38 (A) *Any continuing care contract containing a clause*  
39 *that provides for a resident to be evicted, or provides for*  
40 *a continuing care contract to be canceled for “just cause,”*



1 “good cause,” or other similar provision, shall also include  
2 a provision that none of the following activities by the  
3 resident, or on behalf of the resident, constitutes “just  
4 cause,” “good cause,” or otherwise activates the eviction  
5 or cancellation provision:

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

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

10 (B) Nothing in this provision shall diminish the  
11 provider’s ability to terminate the continuing care  
12 contract for good and sufficient cause.

13 (31) A statement that at least 90 days written notice is  
14 required for an involuntary termination of the continuing  
15 care contract.

16 (32) A statement concerning the length of notice that  
17 is required by a resident for the voluntary termination of  
18 the continuing care contract after the cancellation  
19 period.

20 (33) The policy for refunding any portion of the  
21 entrance fee, in the event of cancellation, termination, or  
22 death.

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

25

26

27

“NOTICE”

(date)

28

29

30

31

32

33

34

35

36

37

38

39

40

This is a continuing care contract as defined by Section 1771(j) or 1771(w) of Chapter 10 of Division 2 of the California Health and Safety Code. This contract form has been approved by the State Department of Social Services as required by Section 1787(b) of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has complied with specific requirements of the statutes. Approval by the department is neither a guaranty of performance nor an endorsement of contract provisions. Prospective transferors and residents are encouraged to carefully consider the benefits and risks of this contract before signing. You should seek financial and legal advice as



1 needed.

2

3 (b) The *continuing care* contract may include, but is  
4 not limited to, and need not include, any of the following  
5 items:

6 (1) Provision for a resident who becomes financially  
7 unable to pay for his or her monthly care fees at some  
8 future date to be subsidized. If provision for subsidizing  
9 a resident is included, the following provisions may be  
10 included:

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

14 (B) A stipulation that the provider shall be the final  
15 and conclusive determining body of any adjustments to  
16 be made or any action to be taken regarding any  
17 charitable consideration to be extended to any of its  
18 residents.

19 (C) Provision for the payment or entitlement of actual  
20 costs of care from any property acquired by the resident  
21 subsequent to the adjustment, as provided in  
22 subparagraph (B), or from any property not disclosed by  
23 the resident at ~~the any time of application.~~

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

28 (E) Provision that the provider may receive an  
29 assignment from the resident of the right to apply for and  
30 to receive such benefits, for and on behalf of the resident.

31 (F) Provision that the provider is not responsible for  
32 the costs of furnishing the resident with any services,  
33 supplies, and medication, when reimbursement is  
34 available from any governmental agency.

35 (2) Provisions which limit responsibility for costs  
36 associated with the treatment or medication of an ailment  
37 or illness existing prior to the date of admission. In such  
38 cases, the medical or surgical exceptions, as disclosed by  
39 the medical entrance examination, shall be listed in the  
40 *continuing care* contract or in the medical report, which



1 may be attached to and made a part of the *continuing*  
2 *care* contract.

3 (3) Legal remedies which may be applied in case any  
4 material misrepresentation or omission pertaining to  
5 assets or health has been made by the resident.

6 (4) A clause which restricts transfer or assignments of  
7 the resident's rights and privileges under a continuing  
8 care contract because of the personal nature of the  
9 *continuing care* contract.

10 (5) A clause for the protection of the provider in  
11 instances where it may wish to waive any of the terms or  
12 provisions of the *continuing care* contract in specific  
13 instances where the resident has breached the *continuing*  
14 *care* contract without relinquishment of its right to insist  
15 upon compliance by the resident with all of the other  
16 terms or provisions.

17 (6) Provision for the reimbursement of any loss or  
18 damage beyond normal wear and tear suffered by the  
19 provider as the result of carelessness or negligence on the  
20 part of the resident.

21 (7) Provision that the resident agrees to observe  
22 off-limit areas of the ~~facility~~ *continuing care retirement*  
23 *community* as designated by the provider for safety  
24 reasons. However, the provider shall not attempt to  
25 absolve itself in the *continuing care* contract from liability  
26 for ~~past or future~~ *its* negligence by any statement to that  
27 effect.

28 (8) Provision for the subrogation to the provider of the  
29 resident's rights in the case of injury to a resident caused  
30 ~~as a result of the act or negligence of a third party by the~~  
31 *acts or omissions of a third party, or for the assignment of*  
32 *the resident's recovery or benefits in this case to the*  
33 *provider to the extent of the value of the goods and*  
34 *services furnished by the provider to or on behalf of the*  
35 *resident.*

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



1 (10) Provision that requires the cooperation of the  
2 resident in assisting in the diligent prosecution of any  
3 claim or action against any third party.

4 (11) Provision for the appointment of a conservator or  
5 guardian by a court of competent jurisdiction in the event  
6 a resident becomes unable to handle his or her personal  
7 or financial affairs.

8 (12) Provision that, in the event a provider whose  
9 property is tax-exempt is required to pay property taxes,  
10 or in-lieu taxes, the additional costs will be charged to the  
11 resident on a pro rata basis.

12 (13) Other provisions approved by the department.

13 ~~(c) Every contract shall contain a~~ *A* copy of the  
14 current audited financial statement *of the provider shall*  
15 *be attached to every continuing care contract.* For a ~~new~~  
16 provider ~~unable to furnish a~~ *whose* current audited  
17 financial statement, ~~which will~~ *does not* accurately reflect  
18 the financial ability of the provider to fulfill the  
19 continuing care contract promises, this requirement shall  
20 include ~~the provider's current audited financial~~  
21 ~~statement, and any supplemental statements that have~~  
22 ~~been submitted to the department after the date of the~~  
23 ~~audited financial statement, together with an additional~~  
24 ~~attachment or attachments~~ that discloses all of the  
25 following:

26 (1) That the reserve requirement has not yet been  
27 determined or met, ~~but and~~ *and* that entrance fees ~~shall~~ *will*  
28 *not* be held in escrow ~~until the requirements of Section~~  
29 ~~4783.2 have been met.~~

30 (2) That the ability to provide the services promised in  
31 the continuing care contract will depend on successful  
32 compliance with the approved financial plan.

33 (3) The approved financial plan for meeting the  
34 reserve requirements.

35 ~~(d) Every contract shall contain a~~ *A* *schedule of the*  
36 *average monthly fees for residential living units charged*  
37 *to residents for each of the five years preceding execution*  
38 *of the continuing care contract shall be attached to every*  
39 *continuing care contract. This schedule shall be updated*  
40 *annually at the end of each fiscal year. If the continuing*





1 liable for performance of all obligations under the  
2 contract.

3 To cancel this transaction, mail or deliver a signed and  
4 dated copy of this cancellation notice, or any other  
5 written notice, or send a telegram

6  
7 to \_\_\_\_\_  
8 *(Name of Provider)*

9 at \_\_\_\_\_  
10 *(Address of provider's place of business)*

11 not later than midnight of \_\_\_\_\_ (date).

12 I hereby cancel this  
13 transaction \_\_\_\_\_  
14 *(Transferor's signature)*

15  
16 *SEC. 37. Section 1788.2 of the Health and Safety Code*  
17 *is amended to read:*

18 1788.2. (a) ~~For nonequity projects, the~~ *The*  
19 *continuing care* contract may be canceled without cause  
20 by written notice from either party, within 90 days from  
21 the date of the transaction.

22 (b) ~~Death~~ *For both equity and nonequity projects,*  
23 *death of the resident* during the cancellation period shall  
24 constitute a cancellation *of the continuing care contract*  
25 *under subdivision (a)*, unless a continuing care contract  
26 includes specific provisions otherwise.

27 (c) The cancellation period, and the refund of  
28 obligations associated therewith, shall ~~not~~ *apply to as*  
29 *follows:*

30 (1) ~~To all continuing care contracts executed in~~  
31 ~~conjunction with the purchase of an equity interest in an~~  
32 ~~equity project from a seller, which, for purposes of this~~  
33 ~~section, is limited to a transferor, a transferor's estate, or~~  
34 ~~a trust of which a transferor or transferor's estate is a~~  
35 ~~beneficiary~~ *nonequity continuing care retirement*  
36 *communities.*

37 (2) *To continuing care contracts executed in*  
38 *conjunction with a purchase of an equity interest from a*  
39 *provider but not to sales of one transferor to another.*



1 ~~(d) Notwithstanding subdivision (c), if the purchaser~~  
2 ~~of an equity interest in an equity project gives the~~  
3 ~~provider written notice of his or her intention to cancel~~  
4 ~~the continuing care contract during the first 90 days~~  
5 ~~following execution of the contract, the provider may not~~  
6 ~~impose a transfer fee which exceeds the difference, if any,~~  
7 ~~between the amount of the sale of the equity interest and~~  
8 ~~the amount the purchaser paid for the interest.~~

9 ~~(e) The following fees may be charged during the~~  
10 ~~90-day cancellation period:~~

11 (1) If possession of the living unit in a nonequity  
12 project is returned to the provider in substantially the  
13 same condition as when received, the only obligation  
14 incurred by the resident shall be a reasonable fee to cover  
15 costs and the reasonable value of services rendered  
16 pursuant to the canceled *continuing care* contract.

17 ~~(2) Under the conditions of the purchase in~~  
18 ~~subdivision (e), an equity project provider may impose a~~  
19 ~~transfer fee on a seller. The transfer fee shall not exceed~~  
20 ~~the difference, if any, between the amount of the sale of~~  
21 ~~the equity interest and the amount the transferor paid for~~  
22 ~~the interest. *Equity project providers may impose a*~~  
23 ~~*transfer fee on sellers. For contracts entered into after*~~  
24 ~~*January 1, 1996, those transfer fees are subject to the*~~  
25 ~~*following limitations:*~~

26 *(A) Upon the cancellation of a continuing care*  
27 *contract executed in conjunction with the purchase of an*  
28 *equity interest from the provider, the provider may*  
29 *charge a transfer fee not to exceed the excess of the gross*  
30 *resale price of the equity interest over the purchase price*  
31 *paid by the transferor for the interest.*

32 *(B) Upon the cancellation of a continuing care*  
33 *contract that is not executed in conjunction with the*  
34 *purchase of an equity interest from the provider, the*  
35 *transfer fee shall be no greater than the sum of 10 percent*  
36 *of either the original or resale price of the equity interest*  
37 *and 100 percent of the appreciation.*

38 *(e) Upon the termination of a continuing care*  
39 *contract that occurs more than 90 days after the purchase*  
40 *of the equity interest from the provider, the transfer fee*



1 shall be no greater than the sum of 10 percent of either  
2 the original or resale price of the equity interest and 100  
3 percent of the appreciation excess if any, of the gross  
4 resale price of the equity interest over the purchase price  
5 paid by the transferor for the interest.

6 (f) For purposes of this section, “gross resale price”  
7 means the resale price before any deductions for transfer  
8 fees, transfer taxes, real estate commissions, periodic fees,  
9 late charges, interest, escrow fees, or any other fees  
10 incidental to the sale of real property.

11 (g) This section shall not be construed to limit the  
12 provider’s ability to withhold delinquent periodic fees,  
13 late charges, accrued interest, or assessments from the  
14 sale proceeds, as provided by the continuing care  
15 contract or the real estate documents governing the  
16 equity facility.

17 SEC. 38. Section 1788.3 of the Health and Safety Code  
18 is repealed.

19 ~~1788.3. (a) Any contract containing a clause that~~  
20 ~~provides for a resident to be evicted, or provides for a~~  
21 ~~contract to be canceled for “just cause,” “good cause,”~~  
22 ~~“good and sufficient cause,” or other similar provision;~~  
23 ~~shall also include a provision that none of the following~~  
24 ~~activities by the resident, or on behalf of the resident,~~  
25 ~~constitutes “just cause,” “good cause,” “good and~~  
26 ~~sufficient cause,” or otherwise activates the eviction or~~  
27 ~~cancellation provision:~~

28 ~~(1) Filing or lodging a formal or informal complaint~~  
29 ~~with the department or other appropriate authority.~~

30 ~~(2) Participation in an organization or affiliation of~~  
31 ~~residents, or other similar lawful activity.~~

32 ~~(b) No provider shall discriminate or retaliate in any~~  
33 ~~manner against any resident of the continuing care~~  
34 ~~retirement community for contacting the State~~  
35 ~~Department of Social Services, or any other state, county,~~  
36 ~~or city agency, or any elected or appointed government~~  
37 ~~official, to file a complaint or for any other reason, or for~~  
38 ~~participation in a residents’ coalition.~~

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



1 1788.4. (a) ~~Any~~ *Except for the cancellation period*  
 2 *any* refunds due pursuant to the *continuing care* contract  
 3 shall be paid within 14 calendar days after ~~making a~~  
 4 *resident makes* possession of the living unit available to  
 5 the provider, or within 90 calendar days after  
 6 cancellation, death, or *receipt of notice of* termination,  
 7 *whichever is later.*

8 (b) ~~If~~ *In nonequity projects, if the provider terminates*  
 9 *the continuing care* contract ~~permits involuntary~~  
 10 ~~termination of the resident, an amount equal to, the~~  
 11 *transferor shall be refunded* the difference between the  
 12 *total amount of entrance, monthly, and optional fees* paid  
 13 and the amount used for the care of the resident ~~during~~  
 14 ~~the time he or she remains in the facility, based upon the~~  
 15 ~~per capita cost to the institution, shall be refunded to the~~  
 16 ~~transferor. However, in cases where a consideration~~  
 17 ~~greater than the minimum charge has been paid for~~  
 18 ~~accommodations above standard, a sum equal to the~~  
 19 ~~difference between the amount paid and the ratio of the~~  
 20 ~~amount paid to the minimum consideration for standard~~  
 21 ~~accommodations, times the current per capita cost to the~~  
 22 ~~facility, applied to the period the resident remained in the~~  
 23 ~~facility, shall be refunded to the transferor. In calculating~~  
 24 ~~the per capita cost, depreciation of real property,~~  
 25 ~~improvements, and furnishings may be included, and~~  
 26 ~~services in-kind shall be excluded. Per capita cost shall be~~  
 27 ~~calculated for each year of residence, except prior year~~  
 28 ~~data may be used to calculate refunds in the year of~~  
 29 ~~termination.~~

30 (c) When additional fees have been paid for unit  
 31 upgrades, these charges shall amortize at the same rate as  
 32 the entrance fee. The transferor shall be refunded the  
 33 unamortized balance.

34 *SEC. 40. Section 1789.2 of the Health and Safety Code*  
 35 *is amended to read:*

36 1789.2. (a) Any provider contemplating capital  
 37 financing that would entail a mortgage or deed of trust for  
 38 any property on which a resident resides pursuant to a  
 39 continuing care contract shall provide the department  
 40 with written notification at least 90 calendar days prior to



1 the execution of the proposed transaction which includes  
 2 all of the following:

3 (1) A description of the terms and amount of the  
 4 proposed transaction.

5 (2) An analysis of the sources of funds for repayment  
 6 of principal and interest.

7 (3) An analysis of the impact of the proposed  
 8 transaction on monthly care fees.

9 (4) An analysis of the impact that the contemplated  
 10 encumbrance of real property would have on assets  
 11 available for statutory reserves required by Section  
 12 1792.2, and refund reserves required by Section 1793.

13 (b) No provider shall execute proposed capital  
 14 financial transactions without the department's written  
 15 authorization or until the 90 calendar day period for  
 16 departmental review has expired.

17 (c) If the department determines that the proposed  
 18 capital financial transaction will materially increase  
 19 monthly fees or impair the provider's ability to maintain  
 20 required reserves, the department may refuse to approve  
 21 the transaction, may record a notice of lien on the  
 22 provider's property pursuant to Section ~~1794.10~~ 1794.14,  
 23 after notifying the provider and giving the provider an  
 24 opportunity to withdraw the planned transaction, or take  
 25 any other action that it determines to be in the best  
 26 interest of the residents.

27 *SEC. 41. Section 1789.4 of the Health and Safety Code*  
 28 *is amended to read:*

29 1789.4. (a) Any provider who ~~voluntarily~~ decides  
 30 *proposes* to sell or transfer ownership of a continuing care  
 31 ~~facility~~ *retirement community* to another party shall first  
 32 obtain approval from the department *before*  
 33 *consummating the sale or transfer.*

34 (b) The provider shall submit written notification to  
 35 the department at least 90 calendar days prior to  
 36 execution of the proposed transaction. The notification  
 37 shall include all of the following:

38 (1) Identification of the proposed purchaser.

39 (2) A description of the terms and amount of the  
 40 proposed transaction.



1 (3) A plan detailing how fulfillment of existing  
2 contract obligations will be ensured.

3 (c) The provider shall give written notice to all  
4 continuing care contract residents and subscribers 60  
5 calendar days prior to the sale or transfer. The notice shall  
6 include all of the following:

7 (1) A description of the parties.

8 (2) A description of the proposed sale *or transfer*.

9 (3) A description of the arrangements for fulfilling  
10 continuing care contract obligations.

11 (4) A description of options available to any subscriber  
12 or resident who does not wish to have his or her contract  
13 assumed by a new provider.

14 (5) An acknowledgment of receipt of the notice to be  
15 signed by the resident.

16 (d) In the absence of the substitution of a new legal  
17 obligor for the provider, the provider shall set up a trust  
18 fund or secure a performance bond to ensure the  
19 fulfillment of continuing care contract obligations.

20 (e) The new owner shall *make applications and* obtain  
21 a certificate of authority and appropriate licenses, before  
22 executing any continuing care contracts, or providing  
23 care or supervision, or both, to any residents.

24 *SEC. 42. Section 1789.6 of the Health and Safety Code*  
25 *is amended to read:*

26 1789.6. All providers shall record and maintain a  
27 “Notice of Statutory Limitation on Transfer” as required  
28 by paragraph ~~(23)~~ (24) of subdivision (a) of Section  
29 1779.4.

30 *SEC. 43. Section 1789.8 of the Health and Safety Code*  
31 *is amended to read:*

32 1789.8. ~~(a)~~ Each provider shall obtain and maintain  
33 in effect insurance or a ~~surety~~ *fidelity* bond for any agent  
34 or employee, who, in the course of his or her agency or  
35 employment, has access to any substantial amount of  
36 funds. ~~The insurance or surety bond shall be in the form~~  
37 ~~and penal sum as the department finds necessary to~~  
38 ~~protect all persons from loss of funds.~~

39 ~~(b) The insurance or surety bond shall be for at least~~  
40 ~~fifty thousand dollars (\$50,000) or the amount of the~~



1 ~~highest entrance fee, whichever is greater, as of the~~  
 2 ~~submission date of the annual report.~~

3 ~~(e) The insurance or surety bond~~ *This* requirement is  
 4 separate from the bonding requirements of Residential  
 5 Care Facility for the Elderly regulations.

6 *SEC. 44. Section 1790 of the Health and Safety Code*  
 7 *is amended to read:*

8 1790. (a) Each provider, that has obtained a  
 9 provisional or final certificate of authority, *and each*  
 10 *provider that possesses an inactive certificate of*  
 11 *authority*, shall submit an annual report of its financial  
 12 condition. The report shall consist of audited financial  
 13 statements *and required reserve calculations*, with ~~an~~  
 14 accompanying certified public accountant's ~~opinion~~  
 15 *opinions* thereon, ~~reserve calculations~~, *Continuing Care*  
 16 *Provider Fee and Calculation Sheet*, resident listings,  
 17 evidence of ~~surety~~ *fidelity* bond *as required by Section*  
 18 *1789.8*, and certification that the *continuing care* contract  
 19 in use for new residents has been approved by the  
 20 department, all in a format provided by the department,  
 21 and shall include all of the following information:

22 (1) A certification, if applicable, that the entity is  
 23 maintaining reserves for prepaid continuing care  
 24 contracts, statutory reserves, and refund reserves.

25 (2) Full details on the status of reserves and on per  
 26 capita costs of operation for each ~~facility~~ *continuing care*  
 27 *retirement community* operated.

28 (3) Full details on any increase in monthly care fees,  
 29 the basis for determining the increase, and the data used  
 30 to calculate the increase.

31 (4) *The required reserve calculation schedules shall*  
 32 *be accompanied by the auditor's opinion as to compliance*  
 33 *with applicable statutes.*

34 (5) Any other information as the department may  
 35 require.

36 (b) Each provider shall file the annual report with the  
 37 department within four months after the ~~end of the~~  
 38 *provider's* fiscal year ~~of that provider~~ *end*. *If the complete*  
 39 *annual report is not received by the due date, a one*  
 40 *thousand dollar (\$1,000) per month late fee shall*



1 *accompany submission of the reports. The department*  
2 *may, at its discretion, waive the late fee for good cause.*

3 (c) The annual report and any amendments thereto  
4 shall be signed and certified by the chief executive officer  
5 of the provider, stating that, to the best of his or her  
6 knowledge and belief, the items are correct.

7 (d) A copy of the most recent annual audited financial  
8 statement shall be transmitted by the provider to each  
9 transferor requesting the statement.

10 (e) A provider shall amend its annual report on file  
11 with the department at any time, without the payment of  
12 any additional fee, if an amendment is necessary to  
13 prevent the report from containing a material  
14 misstatement of fact or omitting a material fact.

15 (f) If a provider is no longer entering into continuing  
16 care contracts, and currently is caring for 10 or fewer  
17 continuing care residents, the provider may request  
18 permission from the department, in lieu of filing the  
19 annual report, to establish a trust fund or to secure a  
20 performance bond to ensure fulfillment of continuing  
21 care contract obligations. *The request shall be made each*  
22 *year within 30 days after the provider's fiscal year end.*  
23 *The request shall include the amount of the trust fund or*  
24 *performance bond determined by calculating the*  
25 *projected life costs, less the projected life revenue, for the*  
26 *remaining continuing care residents in the year the*  
27 *provider requests the waiver. If the department approves*  
28 *the request, the following shall be submitted to the*  
29 *department annually:*

30 (1) *Evidence of trust fund or performance bond and*  
31 *its amount.*

32 (2) *A list of continuing care contract residents. If the*  
33 *number of continuing care residents exceeds 10 at any*  
34 *time, the provider shall comply with the requirements of*  
35 *this section.*

36 (3) *A provider fee as required by subdivision (c) of*  
37 *Section 1791.*

38 (g) *If the department determines a provider's annual*  
39 *audited report needs further analysis and investigation, as*  
40 *a result of incomplete and inaccurate financial*

1 *statements, significant financial deficiencies,*  
 2 *development of work out plans to stabilize financial*  
 3 *solvency, or for any other reason, the provider shall*  
 4 *reimburse the department for reasonable actual costs*  
 5 *incurred by the department or its representative. The*  
 6 *reimbursed funds shall be deposited in the Continuing*  
 7 *Care Contract Provider Fee Fund.*

8 *SEC. 45. Section 1791 of the Health and Safety Code*  
 9 *is amended to read:*

10 1791. (a) An annual fee shall be required of each  
 11 provider which has obtained a provisional or final  
 12 certificate of authority.

13 (b) Each annual report submitted pursuant to Section  
 14 1790 shall be accompanied by a payment to the  
 15 Continuing Care Provider Fee Fund in the amount of  
 16 one-tenth of 1 percent of the portion of total operating  
 17 expenses, excluding debt service and depreciation from  
 18 audited financial statements, which has been allocated to  
 19 continuing care contract residents. The allocation shall be  
 20 based on the ratio of the mean number of total residents.

21 (c) *If a provider is granted an exemption from filing*  
 22 *annual reports to the department pursuant to subdivision*  
 23 *(f) of Section 1790, the minimum annual provider fee*  
 24 *shall be two hundred fifty dollars (\$250). This fee shall be*  
 25 *submitted after the end of the provider's fiscal year with*  
 26 *proof of trust fund or performance bond as required by*  
 27 *subdivision (f) of Section 1790.*

28 *SEC. 46. Section 1792 of the Health and Safety Code*  
 29 *is amended to read:*

30 1792. (a) Any provider furnishing care pursuant to a  
 31 prepaid continuing care contract executed after January  
 32 1, 1979, shall establish a reserve fund escrow account with  
 33 an escrow agent, in an amount which equals the  
 34 aggregate principal and interest, rental, or lease  
 35 payments due during the next 12 months on account of  
 36 any first mortgage or other long-term financing of the  
 37 ~~facility~~ *continuing care retirement community* or any  
 38 leases or other rental agreement for a ~~facility~~ *continuing*  
 39 *care retirement community.*



1 (b) The principal of the escrow account may be  
2 invested, as provided in *subparagraphs (A) through (E),*  
3 *inclusive, of paragraph (3) of subdivision—(d) (e) of*  
4 Section 1792.2 concerning investment of reserve funds,  
5 with the earnings thereon payable to the provider.

6 (c) Amounts not to exceed in the aggregate one-sixth  
7 of the total principal may be released to the provider  
8 upon notice to the department.

9 (d) ~~The~~ *Submit a copy of the executed* escrow  
10 agreement ~~shall that provide~~ *provides* all of the following:

11 (1) That upon withdrawal of any amount by the  
12 provider, the escrow agent shall provide immediate  
13 written notice of the withdrawal to the department.

14 (2) That any amount released to the provider shall be  
15 repaid to the escrow account within two years of the  
16 release of the amount.

17 (3) That if the provider does not repay the escrow  
18 account within the two-year period, the escrow agent  
19 shall provide immediate written notice to the  
20 department.

21 (e) *In the event of a change of escrow agent, the new*  
22 *escrow agreement shall be submitted to the department.*

23 *SEC. 47. Section 1792.2 of the Health and Safety Code*  
24 *is amended to read:*

25 1792.2. (a) Any entity that has executed or assumed  
26 continuing care contracts shall maintain reserves  
27 covering obligations thereunder.

28 (b) The following assumptions shall be used when  
29 calculating the reserves:

30 (1) The following *life expectancy* table ~~of mortality~~  
31 shall be used in connection with all continuing care  
32 contracts:

33



1	Age	Females	Males	Age	Females	Males
2	62	23.392	17.803	82	9.233	7.301
3	63	22.653	17.289	83	8.713	6.899
4	64	21.911	16.769	84	8.221	6.500
5	65	21.167	16.244	85	7.758	6.109
6	66	20.418	15.715	86	7.335	5.755
7	67	19.666	15.180	87	6.930	5.432
8	68	18.910	14.642	88	6.525	5.117
9	69	18.153	14.099	89	6.128	4.818
10	70	17.394	13.533	90	5.762	4.551
11	71	16.636	13.004	91	5.437	4.310
12	72	15.878	12.452	92	5.126	4.079
13	73	15.117	11.897	93	4.829	3.859
14	74	14.387	11.340	94	4.546	3.649
15	75	13.663	10.780	95	4.276	3.49
16	76	12.954	10.217	96	4.019	3.258
17	77	12.293	9.661	97	3.776	3.077
18	78	11.635	9.146	98	3.544	2.905
19	79	10.998	8.653	99	3.325	2.742
20	80	10.391	8.173	100	3.118	2.587
21	81	9.803	7.717			
22						
23	Age	Females	Males	Age	Females	Males
24	55	26.323	23.635	83	7.952	6.269
25	56	25.526	22.863	84	7.438	5.854
26	57	24.740	22.101	85	6.956	5.475
27	58	23.964	21.350	86	6.494	5.124
28	59	23.199	20.609	87	6.054	4.806
29	60	22.446	19.880	88	5.613	4.513
30	61	21.703	19.163	89	5.200	4.236
31	62	20.972	18.457	90	4.838	3.957
32	63	20.253	17.764	91	4.501	3.670
33	64	19.545	17.083	92	4.175	3.388
34	65	18.849	16.414	93	3.862	3.129
35	66	18.165	15.759	94	3.579	2.903
36	67	17.493	15.116	95	3.329	2.705
37	68	16.832	14.486	96	3.109	2.533
38	69	16.182	13.869	97	2.914	2.384
39	70	15.553	13.268	98	2.741	2.254



1	71	14.965	12.676	99	2.584	2.137
2	72	14.367	12.073	100	2.433	2.026
3	73	13.761	11.445	101	2.289	1.919
4	74	13.189	10.830	102	2.152	1.818
5	75	12.607	10.243	103	2.022	1.723
6	76	12.011	9.673	104	1.899	1.637
7	77	11.394	9.139	105	1.784	1.563
8	78	10.779	8.641	106	1.679	1.510
9	79	10.184	8.159	107	1.588	1.500
10	80	9.620	7.672	108	1.522	1.500
11	81	9.060	7.188	109	1.500	1.500
12	82	8.501	6.719	110	1.500	1.500

13  
14 ~~The department shall adopt regulations to update the~~  
15 ~~table of mortality set forth in this paragraph by January~~  
16 ~~1, 1996. The life expectancy table of mortality set forth in~~  
17 ~~this paragraph shall be inoperative when the department~~  
18 ~~adopts regulations that update the table used until this~~  
19 ~~section is amended.~~

20 (2) ~~A zero life expectancy shall be used for~~ For  
21 residents over ~~100~~ 110 years of age ~~in use 1.500 for~~  
22 computing the statutory reserve requirements.

23 (3) *If a continuing care retirement community has*  
24 *contracted with a resident under 55 years of age, provide*  
25 *the department with the methodology used to determine*  
26 *that resident's life expectancy.*

27 (4) A zero interest assumption shall be used to adjust  
28 resident life expectancies in conjunction with the  
29 computation of the statutory reserve requirement.

30 (e) ~~The reserves shall be calculated by progressing~~  
31 ~~through each of the following steps:~~

32 (1) ~~Compute net cash per capita costs:~~

33 (A) ~~Cash operating expenses: Obtain total operating~~  
34 ~~expenses from the audited income statements.~~

35 (ii) ~~Deduct (i): depreciation and other noncash~~  
36 ~~expenses, (ii); processing fees, (iii); community services,~~  
37 ~~(iv); expenses that will not be incurred in future years,~~  
38 ~~(v); reimbursements for services to nonresidents, (vi);~~  
39 ~~donated services, if included as an operating expense on~~  
40 ~~the income statement, (vii); investment income, (viii);~~



1 contributions received; and ~~(ix)~~ other items that the  
2 ~~facility continuing care retirement community~~  
3 reasonably believes should be deducted with  
4 accompanying explanation. For

5 For a ~~facility continuing care retirement community~~ in  
6 its first year of operation or following a major addition to  
7 an existing ~~facility continuing care retirement~~  
8 ~~community~~, cash operating expenses for calculating  
9 reserve requirements may be classified as fixed or  
10 variable and totaled separately.

11 (B) Mean number of residents by level of care: List  
12 the number of residents for each level of care separately  
13 at the beginning of the fiscal year. Add the number of  
14 residents for each level of care separately at the end of the  
15 fiscal year. Divide the total for each level of care by two.

16 (C) Total mean number of residents: Add the total  
17 number of residents at the beginning of the fiscal year to  
18 the total number of residents at the end of the fiscal year  
19 and divide by two. For—~~facilities continuing care~~  
20 ~~retirement communities~~ wherein resident population  
21 fluctuates significantly from month to month and for  
22 ~~facilities continuing care retirement communities~~ in  
23 their first year of operation, the mean number of  
24 residents by level of care or the total mean number; may  
25 be computed by adding the number of residents at the  
26 end of each month in the fiscal year and dividing by the  
27 total number of months included. The daily attendance  
28 for the fiscal year may also be used to determine the mean  
29 number of residents.

30 (D) Net cash per capita cost: Cash operating  
31 expenses divided by the mean number of residents. It is  
32 acceptable, but not required, to compute net cash per  
33 capita for various levels of care, based on allocated  
34 expenses and contributions from consolidated financial  
35 statements. Allocation methods shall be subject to the  
36 approval of the department, and schedules shall be  
37 prepared for all levels of care, including any levels not  
38 covered by ~~life continuing care~~ contracts. For a ~~facility~~  
39 ~~continuing care retirement community~~ in its first year of  
40 operation or following a major addition to an existing



1 ~~facility~~ *continuing care retirement community*, net cash  
2 per capita cost for calculating reserve requirements may  
3 be the sum of the figures determined by dividing fixed  
4 cash operating expenses by the number of residents at the  
5 end of the fiscal year, and dividing variable cash  
6 operating expenses by the mean number of residents.

7 (2) Compute projected life cost:

8 (A) Compute aggregate life expectancies: For each  
9 resident, compare age against the *life expectancy* table of  
10 ~~mortality~~ and total all life expectancies.

11 (B) Multiply net cash per capita costs by aggregate life  
12 expectancies.

13 (3) Compute five-year plan residents: Determine the  
14 maximum annual total of SSI/SSP payments for the year  
15 of entry for each resident. If that amount is greater than  
16 the amount of the entrance fee paid by a resident, the  
17 resident is designated a “Five-year Plan Resident” and  
18 the entrance fee is amortized over five years. No reserves  
19 are required for these residents after the fifth year.

20 (4) Compute projected life revenue:

21 (A) Annual fee: Multiply by 12 each monthly fee paid  
22 by residents, including payments to be made by  
23 third-party payers on behalf of the resident, including  
24 SSI/SSP and Medi-Cal, and contributions, donations, or  
25 endowments, that the provider actually used for  
26 operating expenditures for continuing care contracts  
27 during the fiscal year.

28 (B) Continuing care residents requiring full reserves:  
29 Enter the number of continuing care residents for each  
30 annual fee, excluding five-year plan residents.

31 (C) Aggregate life expectancies: For each resident,  
32 compare age against the *life expectancy* table of ~~mortality~~  
33 and total all life expectancies for each annual fee.

34 (D) Total projected life revenue: Multiply each  
35 annual fee by aggregate life expectancies. Total the  
36 products obtained.

37 (5) Compute statutory reserve:

38 (A) Reserves not including five-year plan residents:  
39 Deduct the projected life revenue from the projected life  
40 cost. If the remainder is less than zero, use zero.



1 (B) Total statutory reserves: Add the total  
2 unamortized balance for five-year plan residents to the  
3 remainder in paragraph (A) above.

4 (6) Compute liquid asset portion of statutory reserve:  
5 For providers that have executed monthly fee contracts  
6 with at least one-half of the residents, compute 5 percent  
7 of the total statutory reserves. For providers that have  
8 executed prepaid contracts with at least one-half of the  
9 residents, compute 25 percent of the total statutory  
10 reserves.

11 (d) At least 25 percent of the statutory reserve shall  
12 consist of liquid assets, as defined in paragraph ~~(9)~~ (8) of  
13 subdivision (e), except that a 5 percent requirement shall  
14 apply to the ~~facilities~~ *continuing care retirement*  
15 *communities* that have executed monthly fee contracts  
16 with at least 50 percent of the residents.

17 (e) The assets available for reserves shall consist of the  
18 following:

19 (1) Deposits in commercial and savings accounts with  
20 California banks that are members of the Federal Deposit  
21 Insurance Corporation.

22 ~~(2) Investments in certificates issued by California~~  
23 ~~savings and loan associations that are members of the~~  
24 ~~Federal Deposit Insurance Corporation, and have been~~  
25 ~~licensed or chartered to operate, and have conducted~~  
26 ~~business in the State of California for a continuous period~~  
27 ~~of five years or more.~~

28 ~~(3) Notes receivable by the facility~~ *continuing care*  
29 *retirement community*, that are secured by first deeds of  
30 trust and first mortgages on property not owned by the  
31 provider or its affiliates.

32 ~~(4)~~

33 (3) Stocks, bonds, and securities, at current market  
34 value unless otherwise specified, shall meet the following  
35 criteria to be approved as assets available for statutory  
36 reserves:

37 (A) Highly liquid money securities, including, but not  
38 limited to, United States Treasury Bills, prime banker's  
39 acceptances, negotiable time certificates of deposit, and  
40 short-term tax-exempt notes.



1 (B) Common stocks rated “above average” or higher  
2 by any national rating agency. For example, a rating of  
3 A+, A, A- by Standard and Poor’s Corporation is required  
4 for common stock.

5 (C) Bonds issued by the United States government or  
6 federal agencies.

7 (D) Nonfederal bonds that have a current rating of at  
8 least “A” by Moody’s Investors Service, Standard and  
9 Poor’s Corporation, or Fitch Investors Service, and are  
10 listed on a national securities exchange.

11 (E) Bonds that are not listed on a national securities  
12 exchange, but are traded over-the-counter and have a  
13 current rating of at least “Aa” by Moody’s Investors  
14 Service or at least “AA” by Standard and Poor’s  
15 Corporation or Fitch’s Investors Service.

16 (F) The security interest in the cash surrender value  
17 of life insurance policies assigned by residents to the  
18 ~~facility~~ *continuing care retirement community*.

19 ~~(5)~~

20 (4) Stocks, bonds, and securities that do not meet the  
21 approval criteria may be retained as part of the reserves  
22 with the specific approval of the department. If necessary  
23 to meet reserve requirements, stocks, bonds, and  
24 securities that are not approved by the department may  
25 be disposed of in a gradual manner, to avoid loss to  
26 certificate holders.

27 ~~(6)~~

28 (5) Real estate used to provide care and housing for  
29 holders of continuing care contracts, or real estate, or  
30 equities therein, owned by the entity as an investment,  
31 the rents from which are used to discharge obligations to  
32 holders of continuing care contracts or to reinvest as a  
33 part of the reserves. These investments may be located  
34 outside the State of California.

35 (A) The value of this real estate shall be based on 70  
36 percent of the net equity thereof, which shall be the book  
37 ~~or appraised value, assessed value less any depreciation~~  
38 ~~and encumbrances, or current appraised value within 12~~  
39 ~~months prior to the end of the fiscal year, less all~~



1 *encumbrances, depreciation, and the amount required*  
2 *for reserves for refundable contracts under Section 1793.*

3 ~~(B) The provider shall request the department's prior~~  
4 ~~written approval of proposed appraisers other than the~~  
5 ~~county assessor or a member of the American Institute of~~  
6 ~~Real Estate Appraisers.~~

7 ~~(C) All appraisals shall show the basis and method of~~  
8 ~~valuation be prepared by either a member of the~~  
9 ~~American Institute of Appraisers or a member of the~~  
10 ~~Society of Real Estate Appraisers, or the county assessor.~~  
11 The department may require technical reports to be  
12 verified or certified, or both. The expense of any technical  
13 reports or any verifications thereof shall be borne by the  
14 provider.

15 ~~(7)~~

16 (6) Seventy percent of the net equity in furniture and  
17 equipment situated on property used to provide care and  
18 housing for holders of continuing care contracts.

19 ~~(8)~~

20 (7) Investment certificates or shares in open end  
21 investment trusts, that meet all of the following  
22 requirements:

23 (A) The trust management shall have experience  
24 either managing another mutual fund registered under  
25 the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1  
26 et seq.), or have been registered as an investment adviser  
27 under the Investment Advisors Act of 1940 (15 U.S.C. Sec.  
28 80b-1 et seq.), and in either case shall currently have at  
29 least one hundred million dollars (\$100,000,000) under its  
30 supervision.

31 (B) Qualified for sale in California.

32 (C) Has at least 40 percent of its directors or trustees  
33 not affiliated with the fund's management company or  
34 principal underwriter or any of their affiliates.

35 (D) Is registered under the Investment Company Act  
36 of 1940.

37 (E) Is a fund listed as qualifying under rules  
38 maintained by the Commissioner of Corporations in  
39 cooperation with the Department of Insurance.

40 ~~(9)~~



1 (8) Liquid assets, if any, shall consist of the following:  
2 (A) Listed bonds, stocks, *and* commercial and savings  
3 accounts, ~~and savings and loan certificates.~~

4 (B) A sinking fund comprised of liquid assets, if it is a  
5 replacement fund subject to disbursement for items,  
6 including, but not limited to, payment of principal and  
7 interest on the mortgage or for operations during the  
8 succeeding year. Replacement funds, that may only be  
9 used for capital improvements or repairs, shall not be  
10 included in liquid reserves.

11 ~~(10)~~  
12 (9) Deposits made prior to signing a continuing care  
13 contract represent liabilities and shall be offset against  
14 liquid assets, if any, otherwise against any other assets.

15 ~~(11)~~  
16 (10) Deposits that represent funds turned over to the  
17 ~~facility~~ *continuing care retirement community* by  
18 residents for safekeeping without relinquishing control  
19 thereof shall be offset against liquid assets, if any,  
20 otherwise against other assets.

21 *SEC. 48. Section 1793 of the Health and Safety Code*  
22 *is amended to read:*

23 1793. (a) Any provider offering a refundable  
24 contract, or other entity assuming responsibility for  
25 refundable contracts, ~~prior to January 1, 1991,~~ shall  
26 maintain a refund reserve ~~bank account~~ *fund* in trust for  
27 the residents. This trust ~~account~~ *fund* shall remain intact  
28 to accumulate interest earnings resulting from  
29 investments of liquid reserves in accordance with  
30 *paragraph (1) of subdivision (e) and subparagraphs*  
31 *(A) through (E), inclusive, of paragraph (3) of*  
32 *subdivision (e) of Section 1792.2. The amount of the*  
33 *refund reserve shall be revised annually by the provider*  
34 *and submitted to the department in conjunction with the*  
35 *annual report required by Section 1790.*

36 (b) *Any providers or other entity assuming*  
37 *responsibility for refundable contracts, which has not*  
38 *executed refundable contracts in a continuing care*  
39 *retirement community prior to January 1, 1996, and*  
40 *proposes to execute these contracts in that continuing*



1 care retirement community after that date, shall  
2 maintain a refund reserve fund in trust for the residents  
3 holding such contracts.

4 (1) Except as noted in paragraph (2), this trust fund  
5 shall remain intact as specified in subdivision (a).

6 (2) The trust account may invest up to 50 percent of  
7 the refund reserves in real estate that is used to provide  
8 care and housing for the holders of the refundable  
9 contracts and is located on the same campus where these  
10 contract holders reside.

11 (A) These investments in real estate shall be limited to  
12 70 percent of the net equity, which shall be the book value  
13 less any depreciation and encumbrances, all according to  
14 audited financial statements acceptable to the  
15 department.

16 (B) The return each year to the trust from these real  
17 estate investments shall be not less than the amount  
18 necessary to meet the limitations described in paragraph  
19 (2) and subparagraph (A).

20 (3) Each refund reserve trust fund shall be established  
21 at an institution qualified to be an escrow agent pursuant  
22 to an agreement between the provider and the institution  
23 based on this section and approved in advance by the  
24 department.

25 (4) The amount to be held in the reserve fund shall be  
26 the total of the amounts calculated with respect to each  
27 individual resident as follows:

28 (A) Determine the age in years and the portion of the  
29 entry fee for the resident refundable for the seventh year  
30 of residency.

31 (B) Determine life expectancy of that individual from  
32 the life expectancy table in paragraph (1) of subdivision  
33 (b) of Section 1792.2. If there is a couple, use the life  
34 expectancy for the individual with the longer life  
35 expectancy.

36 (C) Determine the rate of interest at the lower of 7  
37 percent or the interest rate on 10-year treasury bonds, less  
38 1 percent as of the end of the previous year.

39 (D) For that resident, determine from compound  
40 interest tables at the interest rate determined in



1 *subparagraph (C) or at a lower interest rate, the factor*  
2 *which represents the amount required today to grow at*  
3 *compound interest to one dollar (\$1) at the end of the*  
4 *period of the life expectancy of the resident.*

5 *(E) Multiply the refundable portion of the resident's*  
6 *entry fee amount by the factor obtained in subparagraph*  
7 *(D) to determine the amount of reserve required to be*  
8 *maintained.*

9 *(F) The sum of these amounts with respect to each*  
10 *resident shall constitute the reserve for refundable*  
11 *contracts.*

12 *(G) The reserve for refundable contracts will be*  
13 *revised annually as provided for in subdivision (a), using*  
14 *the interest rate, refund obligation amount, and*  
15 *individual life expectancies current at that time.*

16 *(5) Withdrawals may be made from the trust fund to*  
17 *pay refunds when due under the terms of the refundable*  
18 *entry fee contracts and when the balance in the trust fund*  
19 *exceeds the required refund reserve amount determined*  
20 *in accordance with paragraph (4) of subdivision (b).*

21 *(6) Deposits shall be made to the trust fund with*  
22 *respect to new residents when the entry fee is received*  
23 *and in the amount determined with respect to that*  
24 *resident in accordance with paragraph (4) of subdivision*  
25 *(b).*

26 *(7) Additional deposits shall be made to the trust fund*  
27 *within 30 days of any annual reporting date on which the*  
28 *trust fund balance falls below the required reserve in*  
29 *accordance with paragraph (4) of subdivision (b) and*  
30 *such deposits shall be in an amount sufficient to bring the*  
31 *trust fund balance into compliance with this section.*

32 *(c) Any provider which has executed refundable*  
33 *contracts in a continuing care retirement community*  
34 *prior to January 1, 1996, and which has not executed*  
35 *refundable contracts in a continuing care retirement*  
36 *community prior to January 1, 1991, shall submit, for the*  
37 *department's approval, a method of determining a*  
38 *refund reserve to be held in trust for the residents.*  
39 *Approved methods include any of the following:*



1 (1) The establishment, at the time continuing care  
 2 contracts are signed, of a reserve fund in trust for the full  
 3 amount of the refunds promised.

4 (2) The purchase from an insurance company,  
 5 authorized to do business in the State of California, of fully  
 6 paid life insurance policies for the full amount of the  
 7 refunds promised.

8 (3) A method approved by the American Academy of  
 9 Actuaries in their Actuarial Standards of Practice  
 10 Relating to Continuing Care Retirement Communities,  
 11 which method provides for fully funding the refund  
 12 obligations in a separate trust fund as provided in  
 13 subdivision (b).

14 ~~(b)The~~  
 15 (d) Any provider offering a refundable contract, or  
 16 other entity assuming responsibility for refundable  
 17 contracts prior to January 1, 1991, shall maintain a refund  
 18 reserve bank account in trust for the residents as  
 19 described in subdivision (b) except that the amount of  
 20 refund reserves shall be calculated based on the following  
 21 assumptions and methods of calculation:

22 (1) The ~~facility~~ continuing care retirement  
 23 community will no longer receive entry fee income after  
 24 a period of 40 years following the commencement of  
 25 operation.

26 (2) Approved long-term investments, such as treasury  
 27 notes, will earn 3 percent more than the rate of inflation.

28 (3) Entrance fees will increase at the rate of inflation.

29 (4) Land values will increase at the rate of inflation.

30 (5) Investments in the refund reserve trust ~~account~~  
 31 will increase at the rate for approved long-term  
 32 investments.

33 ~~(e)The amount of refund reserves shall be calculated~~  
 34 ~~as follows:~~

35 ~~(1)~~

36 (6) Calculate the number of units to be resold each  
 37 year at the approved rate of turnover.

38 ~~(2)~~

39 (7) Determine the mean entrance fee, as of the  
 40 current date.



1     ~~(3)~~  
2     (8) Determine the factor for inflating the mean  
3 entrance fee at the rate of 3 percent below the interest  
4 rate on new 30-year treasury bonds, for each year from  
5 the current date to the 40th year of operation, or until all  
6 units have been turned over.

7     ~~(4)~~  
8     (9) Calculate the inflated mean entrance fees for the  
9 40th year and for each preceding year, until all units have  
10 been turned over.

11    ~~(5)~~  
12    (10) Multiply the inflated mean entrance fee for the  
13 40th year, and each preceding year, as specified in  
14 paragraph ~~(4)~~ (9), by the annual turnover, as specified in  
15 paragraph ~~(4)~~ (6), until the total of the annual turnovers  
16 used in the calculations equals the total number of units  
17 in the ~~facility~~ *continuing care retirement community*.

18    ~~(6)~~  
19    (11) The projected refund liability shall be the sum of  
20 the products obtained pursuant to paragraph ~~(5)~~ (10),  
21 multiplied by the rate of refund for the seventh year of  
22 residency, specified by current *continuing care* contracts,  
23 multiplied by the percentage of current continuing care  
24 contracts which specify this rate of refund. The projected  
25 refund liability amount shall be calculated for each rate,  
26 if existing *continuing care* contracts specify several rates.

27    ~~(7)~~  
28    (12) The projected refund liability, or the aggregate of  
29 these liabilities, if several rates are obtained pursuant to  
30 paragraph ~~(6)~~ (11), may be reduced by the value of the  
31 land used for the ~~facility~~ *continuing care retirement*  
32 *community*, inflated to the 40th year of operation, as  
33 determined pursuant to paragraph (4), if the provider  
34 agrees to a lien pursuant to Section ~~1794.10~~ 1794.14 to  
35 secure this commitment.

36    ~~(8)~~  
37    (13) Calculate the present value of the projected  
38 refund liability at the current rate of interest for new  
39 30-year treasury bonds. The result is the required refund  
40 reserve.



1 ~~(d) The amount of the refund reserve shall be revised~~  
2 ~~annually by the provider and submitted to the~~  
3 ~~department in conjunction with the annual report~~  
4 ~~required by Section 1790.~~

5 (e) Any entity which holds a certificate of authority,  
6 *provisional certificate of authority*, or permit to sell  
7 deposit subscriptions on or before September 23, 1986,  
8 shall be exempted from the refund reserve requirement  
9 established by this section, if the entity has an equity  
10 balance of five times the amount of the refund reserves  
11 calculated pursuant to subdivision (c).

12 (1) The equity balance shall be verified by one or more  
13 of the following means:

14 (A) The “stockholders’ equity,” or equivalent amount,  
15 as reflected on the most recent Form 10K (which may be  
16 on a consolidated basis or on a consolidated and combined  
17 basis) filed with the Securities and Exchange  
18 Commission.

19 (B) The “total fund balance of net worth,” or  
20 equivalent amount, as reflected on Form 990 or Form  
21 990-PF filed with the Internal Revenue Service.

22 (C) The “total net worth,” or equivalent amount, as  
23 reflected on the most recent Form 109 filed with the  
24 Franchise Tax Board.

25 (2) The amount of the requirement for the equity  
26 balance shall be revised annually pursuant to this section.

27 (3) Compliance shall be based on review, by the  
28 department, of financial statements prepared in  
29 accordance with generally accepted accounting  
30 principles, accompanied by an unqualified opinion by a  
31 certified public accountant.

32 (4) If the equity balance is determined by the  
33 department to be less than the required amount, the  
34 provider or other entity assuming responsibility shall  
35 deposit, in a form satisfactory to the department, an  
36 amount equal to the refund reserve required within 60  
37 days.

38 ~~(f) Each refund reserve trust fund shall be established~~  
39 ~~at an institution qualified to be an escrow agent pursuant~~  
40 ~~to an agreement between the provider and the institution~~



1 ~~based on this section and approved in advance by the~~  
2 ~~department.~~

3 ~~(1) The agreement shall specify that neither principal~~  
4 ~~nor earnings may be withdrawn from the fund without~~  
5 ~~prior written approval by the department.~~

6 ~~(2) Circumstances for approval by the department of~~  
7 ~~withdrawals from the fund shall be limited to a reduction~~  
8 ~~in the refund reserve requirement due to annual~~  
9 ~~determination.~~

10 ~~(g) Any provider, which has not executed refundable~~  
11 ~~contracts prior to January 1, 1991, and proposes to execute~~  
12 ~~these contracts after that date, shall submit for the~~  
13 ~~department's approval a method of determining a refund~~  
14 ~~reserve. Approved methods include any of the following:~~

15 ~~(1) The establishment of a reserve for the full amount~~  
16 ~~of the refunds promised.~~

17 ~~(2) The purchase, from an insurance company~~  
18 ~~authorized to do business in the State of California, of fully~~  
19 ~~paid life insurance policies for the full amount of the~~  
20 ~~refunds promised.~~

21 ~~(3) Any method approved by the American Academy~~  
22 ~~of Actuaries in their Actuarial Standards of Practice~~  
23 ~~Relating to Continuing Care Retirement Communities,~~  
24 ~~which method provides for fully funding the refund~~  
25 ~~obligations.~~

26 *SEC. 49. Section 1793.5 of the Health and Safety Code*  
27 *is amended and renumbered to read:*

28 ~~1793.5.~~

29 *1794.* (a) Any entity ~~which~~ *that* sells deposit  
30 subscriptions proposing to promise to provide care  
31 without having a current and valid permit to sell deposit  
32 subscriptions is guilty of a misdemeanor.

33 (b) Any entity which sells deposit subscriptions and  
34 fails to place any consideration received into an escrow  
35 account pursuant to this chapter is guilty of a  
36 misdemeanor.

37 (c) Any entity which executes a continuing care  
38 contract without holding a current and valid provisional  
39 or final certificate of authority is guilty of a misdemeanor.



1 (d) *Any entity that abandons the continuing care*  
2 *retirement community or the entity's obligations under*  
3 *a continuing care contract, pursuant to subdivision (f), is*  
4 *guilty of a misdemeanor. Any entity in violation of this*  
5 *section shall be liable to the injured resident for treble the*  
6 *amount of damages assessed in any civil action brought by*  
7 *or on behalf of the resident in any court having proper*  
8 *jurisdiction. The court may, in its discretion, award all*  
9 *costs and attorney fees to the injured resident, if that*  
10 *resident prevails in the action.*

11 (e) Each violation of subdivision (a), (b), ~~(c)~~, or (d)  
12 is subject to a fine not to exceed ten thousand dollars  
13 (\$10,000), or by imprisonment in the county jail for a  
14 period not to exceed one year, or by both the fine and  
15 imprisonment.

16 ~~(e)~~

17 (f) Any entity that issues, delivers, or publishes, or as  
18 manager or officer or in any other administrative  
19 capacity, assists in the issuance, delivery, or publication of  
20 any printed matter, oral representation, or advertising  
21 material which does not conform to the requirements of  
22 this section is guilty of a misdemeanor.

23 ~~(f)~~

24 (g) Any violation of subdivision ~~(e)~~ (f) shall constitute  
25 cause for the suspension of all and any licenses, permits,  
26 *provisional certificates of authority*, and certificates of  
27 authority issued to such ~~person, organization, provider,~~  
28 ~~association, or corporation~~ *entity* by any agency of the  
29 state.

30 (h) *Any violation under this section shall be an act of*  
31 *unfair competition as defined in Section 17200 of the*  
32 *Business and Professions Code.*

33 *SEC. 50. Section 1793.6 of the Health and Safety Code*  
34 *is amended and renumbered to read:*

35 ~~1793.6.~~

36 1794.2. (a) The department may issue citations  
37 pursuant to this section containing orders of abatement  
38 and assessing civil penalties against any ~~person~~ *entity* who  
39 violates Section 1771.2 or ~~1793.5~~ 1794.



1 (b) If upon inspection or investigation, the  
2 department has probable cause to believe that an entity  
3 is violating Section 1771.2 or ~~1793.5~~ 1794, the department  
4 may issue a citation to that entity. Each citation shall be  
5 in writing and shall describe with particularity the basis  
6 of the citation. Each citation shall contain an order of  
7 abatement. In addition to the ~~civil—penalties~~  
8 *administrative fines* pursuant to Section ~~1793.27~~ 1794.26,  
9 a provider in violation of the abatement order shall be  
10 liable for an assessment of a civil penalty in the amount  
11 of two hundred dollars (\$200) per day for violation of the  
12 abatement order.

13 (c) The civil penalty authorized in subdivision (b)  
14 shall be imposed if an uncertified facility is operated and  
15 the operator refuses to seek a certificate of authority or  
16 the operator seeks a certificate of authority and the  
17 application is denied and the operator continues to  
18 operate the uncertificated facility, unless other remedies  
19 available to the department, including prosecution, are  
20 deemed more effective by the department.

21 (d) Service of a citation issued under this section may  
22 be made by certified mail at the last known business  
23 address or residence address of the ~~person~~ *entity* cited.

24 (e) Any ~~person~~ *entity* served with a citation under this  
25 section may appeal to the department in writing within  
26 15 working days after service of the citation with respect  
27 to violations alleged, scope of the order of abatement, or  
28 amount of civil penalty assessed.

29 (f) If the ~~person~~ *entity* cited fails *without good cause*  
30 to appeal to the department in writing within 15 ~~working~~  
31 *business* days after service of the citation, the citation  
32 shall ~~be~~ *become* a final order of the department ~~and shall~~  
33 ~~not be subject to review by any court or agency.~~ The  
34 department may extend the 15-day period for good cause,  
35 *to a maximum of 15 additional days.*

36 (g) If the ~~person~~ *entity* cited under this section makes  
37 a timely appeal of the citation, the department shall  
38 provide an opportunity for a hearing. The department  
39 shall thereafter issue a decision, based on findings of fact,  
40 affirming, modifying, or vacating the citation or directing



1 other appropriate relief. The proceedings under this  
2 section shall be conducted in accordance with the  
3 provisions of Chapter 5 (commencing with Section  
4 11500) of Part 1 of Division 3 of Title 2 of the Government  
5 Code, and the department shall have all the powers  
6 granted therein.

7 (h) After exhaustion of the review procedures  
8 specified in this section, the department may apply to the  
9 appropriate superior court for a judgment in the amount  
10 of the civil penalty and an order compelling the cited  
11 entity to comply with the order of abatement. The  
12 application, *which* shall include a certified copy of the  
13 final order of the department, ~~and shall constitute a~~  
14 ~~sufficient showing to warrant the issuance of the~~  
15 ~~judgment and order shall be served upon the cited entity~~  
16 *who shall have five business days within which to file that*  
17 *entity's response in writing in the superior court, this*  
18 *period may be extended for good cause. Failure on the*  
19 *part of the cited entity to so respond shall constitute*  
20 *grounds for entry of a default judgment against that*  
21 *entity. In the event a response is timely filed in superior*  
22 *court, the action shall have priority for trial over all other*  
23 *civil matters.*

24 (i) Notwithstanding any other provision of law, the  
25 department may waive part *or all* of the civil penalty if  
26 the entity against whom the civil penalty is assessed  
27 satisfactorily completes all the requirements for, and is  
28 issued, a certificate of authority.

29 (j) Civil penalties recovered pursuant to this section  
30 shall be deposited into the Continuing Care Provider Fee  
31 Fund, ~~but notwithstanding Section 1778 shall be available~~  
32 ~~for expenditure only upon express appropriation by the~~  
33 ~~Legislature.~~

34 *SEC. 51. Section 1793.7 of the Health and Safety Code*  
35 *is amended and renumbered to read:*

36 ~~1793.7.~~

37 *1794.4.* A permit to sell deposit subscriptions, *a*  
38 *provisional certificate of authority*, or a certificate of  
39 authority shall be forfeited by operation of law ~~prior to its~~  
40 ~~expiration date~~ when any one of the following occurs:



1 ~~(a) The applicant or provider sells or otherwise~~  
2 ~~transfers the facility or facility property and when the~~  
3 ~~transfer of stock constitutes a major change in ownership.~~

4 ~~(b) The applicant or provider surrenders the permit~~  
5 ~~to sell deposit subscriptions or certificate of authority to~~  
6 ~~the department.~~

7 ~~(c) The applicant or provider moves a facility from~~  
8 ~~one location to another.~~

9 ~~(d) The applicant or provider abandons the facility.~~

10 ~~(e) The facility is sold.~~

11 ~~(f) The applicant or provider is evicted from the~~  
12 ~~facility premises.~~

13 *(a) The applicant has notified the department that*  
14 *marketing of the proposed continuing care retirement*  
15 *community has been terminated.*

16 *(b) The applicant or provider surrenders the permit*  
17 *to sell deposit subscriptions, provisional certificate of*  
18 *authority, or certificate of authority to the department.*

19 *(c) The applicant or provider enters into a contract*  
20 *with a third party entity for management of the*  
21 *continuing care retirement community without the*  
22 *department's prior approval.*

23 *(d) The applicant or provider sells or otherwise*  
24 *transfers all or part of the continuing care retirement*  
25 *community.*

26 *(e) The applicant or provider transfers stock where*  
27 *the transfer results in a majority change in ownership of*  
28 *the continuing care retirement community or the*  
29 *certificate of authority holder.*

30 *(f) The applicant or provider moves the continuing*  
31 *care retirement community from one location to another*  
32 *without the department's prior approval.*

33 *(g) The applicant or provider abandons the*  
34 *continuing care retirement community or its obligations*  
35 *under the continuing care contracts.*

36 *(h) The applicant or provider is evicted from the*  
37 *continuing care retirement community premises.*

38 *SEC. 52. Section 1794.6 is added to the Health and*  
39 *Safety Code, to read:*



1 1794.6. A Certificate of Authority shall be  
2 automatically inactivated when a provider voluntarily  
3 ceases to enter into continuing care contracts with new  
4 residents. The provider shall continue to comply with all  
5 provisions of this chapter until all continuing care  
6 contractual obligations have been fulfilled.

7 SEC. 53. Section 1793.9 of the Health and Safety Code  
8 is amended and renumbered to read:

9 ~~1793.9.~~

10 1794.8. (a) Obligations pursuant to continuing care  
11 ~~agreements~~ contracts executed by a provider shall be  
12 deemed a preferred claim against all assets owned by the  
13 provider in the event of liquidation. However, this  
14 preferred claim shall be subject to any perfected claims  
15 secured by mortgage, deed of trust, pledge, deposit as  
16 security, escrow, or otherwise secured.

17 (b) For purposes of computing the reserve required  
18 pursuant to Section 1792.2, the liens required under  
19 Section ~~1793.15~~ 1794.14 shall not be deducted from the  
20 value of real or personal property.

21 SEC. 54. Section 1793.11 of the Health and Safety  
22 Code is amended and renumbered to read:

23 ~~1793.11.~~

24 1794.10. (a) Any transfer of money or property,  
25 pursuant to a continuing care contract found by the  
26 department to be executed in violation of this chapter, is  
27 voidable at the option of the transferor for a period of 90  
28 days from the execution of the transfer.

29 (b) No action may be brought for the reasonable value  
30 of any services rendered between the date of transfer and  
31 the date the transferor disaffirms the *continuing care*  
32 contract.

33 (c) With respect to real property, the right of  
34 disaffirmance or rescission is conclusively presumed to  
35 have terminated if a notice of intent to rescind is not  
36 recorded with the county recorder of the county in which  
37 the real property is located within 90 days from the date  
38 of execution of the conveyance by the transferor.

39 (d) Any deed or other instrument of conveyance shall  
40 contain a recital that the transaction is made pursuant to



1 rescission by the transferor within 90 days from the date  
2 of the transfer.

3 (e) Any transfer of a sum of money or property, real  
4 or personal, to anyone pursuant to a continuing care  
5 contract that was not approved by the department is  
6 voidable at the option of the department or transferor or  
7 his or her assigns or agents.

8 (f) Any transaction determined by the department to  
9 be in violation of this chapter is voidable at the option of  
10 the transferor or his or her assigns or agents.

11 *SEC. 55. Section 1793.13 of the Health and Safety*  
12 *Code is amended and renumbered to read:*

13 ~~1793.13.~~

14 *1794.12.* (a) In either of the following situations the  
15 department may require the provider to submit within 60  
16 days a financial plan detailing the method by which the  
17 provider proposes to overcome the deficiencies noted by  
18 the department.

19 (1) If a provider fails to file an annual report as  
20 required by Section 1790.

21 (2) At any other time when the department has reason  
22 to believe that the provider is insolvent, is in imminent  
23 danger of becoming insolvent, is in a financially unsound  
24 or unsafe condition, or that its condition is such that it may  
25 otherwise be unable to fully perform its obligations  
26 pursuant to continuing care contracts.

27 (b) The department shall approve or disapprove the  
28 plan within 30 days of its receipt.

29 (c) If the plan is approved, the provider shall  
30 immediately implement the plan.

31 (d) If the plan is disapproved, or if it is determined that  
32 the plan is not being fully implemented, the department  
33 may, after consultation with and upon consideration of  
34 the recommendations of the ~~Committee on~~ Continuing  
35 Care Contracts *Committee*, require the provider to  
36 obtain new or additional management capability to solve  
37 its difficulties. A reasonable period, as determined by the  
38 department, shall be allowed to the reorganized  
39 management to develop a plan which, subject to the  
40 approval of the department and after review by the



1 committee, will reasonably assure that the provider will  
 2 meet its responsibilities under the law.

3 *SEC. 56. Section 1793.15 of the Health and Safety*  
 4 *Code is amended and renumbered to read:*

5 ~~1793.15.~~

6 1794.14. (a) When necessary to secure the  
 7 performance of all obligations of the applicant or  
 8 provider to transferors, the department may record a  
 9 notice or notices of lien on behalf of the transferors. From  
 10 the date of recording, the lien shall attach to all real  
 11 property owned or acquired by the provider during the  
 12 pendency of the lien, provided such property is not  
 13 exempt from the execution of a lien and is located within  
 14 the county in which the lien is recorded. The lien shall  
 15 have the force, effect, and priority of a judgment lien.

16 (b) The department shall file a release of the lien if the  
 17 department deems the lien no longer necessary to secure  
 18 the performance of all obligations of the applicant or  
 19 provider to the transferors.

20 (c) The applicant or provider may appeal to the  
 21 department from a refusal of a request for a release of the  
 22 lien.

23 (d) The decision shall be subject to court review  
 24 pursuant to Section 1094.5 of the Code of Civil Procedure,  
 25 upon petition of the applicant or provider filed within 30  
 26 days of service of the decision.

27 *SEC. 57. Section 1793.17 of the Health and Safety*  
 28 *Code is amended and renumbered to read:*

29 ~~1793.17.~~

30 1794.16. (a) When necessary to secure the interests  
 31 of transferors, the department may require that the  
 32 applicant or provider reestablish an escrow account,  
 33 return previously released moneys to escrow, and escrow  
 34 all future entrance fee payments.

35 (b) The department may release funds from escrow  
 36 when it deems the escrow is no longer necessary to secure  
 37 the performance of all obligations of the applicant or  
 38 provider to the transferors.

39 *SEC. 58. Section 1793.19 of the Health and Safety*  
 40 *Code is amended and renumbered to read:*



1 ~~1793.19.~~

2 1794.18. The civil, criminal, and administrative  
3 remedies available to the department pursuant to this  
4 article are not exclusive and may be sought and employed  
5 in any combination deemed advisable by the department  
6 to enforce this chapter.

7 *SEC. 59. Section 1793.21 of the Health and Safety*  
8 *Code is amended and renumbered to read:*

9 ~~1793.21.~~

10 1794.20. ~~(a)~~—The department, in its discretion, may  
11 ~~limit~~ *condition*, suspend, or revoke any permit to sell  
12 deposit subscriptions, *provisional certificate of authority*,  
13 or ~~certificates~~ *certificate* of authority issued under this  
14 chapter if it finds any one or more of the following:

15 ~~(1)~~

16 (a) Violation by the provider of this chapter or the  
17 rules and regulations adopted under this chapter.

18 ~~(2)~~

19 (b) Aiding, abetting, or permitting the violation of this  
20 chapter or the rules and regulations adopted under this  
21 chapter.

22 ~~(3)~~

23 (c) Suspension or revocation of the license of the  
24 provider pursuant to the licensing provisions of Chapter  
25 2 (commencing with Section 1250) or Chapter 3.2  
26 (commencing with Section 1569).

27 ~~(4)~~

28 (d) Material misstatement, misrepresentation, or  
29 fraud in obtaining the permit to sell deposit subscriptions,  
30 *provisional certificate of authority*, or certificates of  
31 authority.

32 ~~(5)~~

33 (e) Demonstrated lack of fitness or trustworthiness.

34 ~~(6)~~

35 (f) Fraudulent or dishonest practices of management  
36 in the conduct of business.

37 ~~(7)~~

38 (g) Misappropriation, conversion, or withholding of  
39 moneys.

40 ~~(8)~~



1 (h) Refusal by the provider to be examined or to  
2 produce its accounts, records, and files for examination,  
3 or refusal by any of its officers to give information with  
4 respect to its affairs or to perform any other legal  
5 obligations as to such examination, when required by the  
6 department.

7 ~~(9)~~

8 (i) The provider's unsound financial condition or use  
9 of such methods and practices in the conduct of business  
10 as to render further transactions by the provider  
11 hazardous or injurious to the public.

12 ~~(10)~~

13 (j) Failure to maintain at all times at least the  
14 minimum statutory reserves required by Section 1792.2.

15 ~~(11)~~

16 (k) Failure to maintain the reserve fund escrow  
17 account for prepaid—~~continuous~~ *continuing* care contracts  
18 required by Section 1792.

19 ~~(12)~~

20 (l) Failure to comply with the refund reserve  
21 requirements of Section 1793.

22 ~~(13)~~

23 (m) Failure by the provider to maintain escrow  
24 accounts for funds as required by this chapter.

25 ~~(14)~~

26 (n) Failure to file an annual report as required by  
27 Section 1790, ~~after notice that the report is due.~~

28 ~~(15)~~

29 (o) Violation of a ~~limitation~~ *condition* on a certificate.

30 ~~(16)~~

31 (p) Failure to comply with its approved financial and  
32 marketing plan, or secure approval of a modified plan.

33 ~~(17)~~

34 (q) A material change or deviation from the approved  
35 plan of operation without the prior consent of the  
36 department.

37 ~~(18)~~

38 (r) Failure by the provider to fulfill its obligations  
39 under continuing care contracts.



1 (s) Failure by the provider to submit proposed  
2 changes to continuing care contracts prior to use, or  
3 execution of a continuing care contract that has not been  
4 previously approved by the department.

5 (t) Failure by the provider to diligently submit  
6 materials required by the statute.

7 SEC. 60. Section 1793.23 of the Health and Safety  
8 Code is amended and renumbered to read:

9 ~~1793.23.~~

10 1794.22. (a) The department shall consult with and  
11 consider the recommendations of the ~~Committee on~~  
12 Continuing Care Contracts ~~Committee~~ prior to ~~limiting~~  
13 conditioning, suspending, or revoking any permit to sell  
14 deposit subscriptions, *provisional certificate of authority*,  
15 or certificate of authority.

16 (b) The provider shall have a right of appeal to the  
17 department. The proceedings shall be conducted in  
18 accordance with Chapter 5 (commencing with Section  
19 11500) of Part 1 of Division 3 of Title 2 of the Government  
20 Code, and the department shall have all of the powers  
21 granted therein. A suspension, ~~limitation~~ condition, or  
22 revocation shall remain in effect until completion of the  
23 proceedings in favor of the provider. In all proceedings  
24 conducted in accordance with this section, the standard  
25 of proof to be applied shall be by a preponderance of the  
26 evidence.

27 (c) The department may, upon finding of changed  
28 circumstances, remove a suspension or ~~limitation~~  
29 condition.

30 SEC. 61. Section 1793.25 of the Health and Safety  
31 Code is amended and renumbered to read:

32 ~~1793.25.~~

33 1794.24. (a) During the period that the revocation or  
34 suspension action is pending against the permit to sell  
35 deposit subscriptions, *provisional certificate of authority*,  
36 or certificate of authority, the provider shall not enter  
37 into any new *continuing care* contracts or deposit  
38 subscription agreements.

39 (b) The suspension or revocation by the department,  
40 or voluntary return of the *provisional certificate of*



1 *authority or* certificate of authority by the provider, shall  
2 not release the provider from obligations assumed at the  
3 time the continuing care contracts were executed.

4 *SEC. 62. Section 1793.27 of the Health and Safety*  
5 *Code is amended and renumbered to read:*

6 ~~1793.27.~~

7 1794.26. (a) If the department finds that one or more  
8 grounds exist for the discretionary ~~limitation condition~~,  
9 revocation, or suspension of a permit to sell deposit  
10 subscriptions, *provisional certificate of authority*, or a  
11 certificate of authority issued under this chapter, the  
12 department, in lieu of the ~~limitation condition~~,  
13 revocation, or suspension, may impose a ~~civil penalty~~  
14 *administrative fine* upon the provider in an amount not  
15 to exceed one thousand dollars (\$1,000) per violation.

16 (b) The ~~civil penalty~~ *administrative fine* shall be  
17 deposited in a ~~segregated bank account~~ *the Continuing*  
18 *Care Provider Fee Fund* and shall be disbursed for the  
19 specific purposes of offsetting the costs of investigation  
20 and litigation and to compensate court-appointed  
21 administrators when ~~facility continuing care retirement~~  
22 *community* assets are insufficient.

23 *SEC. 63. Section 1793.29 of the Health and Safety*  
24 *Code is amended and renumbered to read:*

25 ~~1793.29.~~

26 1794.28. In the case of any violation or threatened  
27 violation of this chapter, the department may institute a  
28 proceeding or may request the Attorney General to  
29 institute a proceeding to obtain injunctive or other  
30 equitable relief in the superior court in and for the county  
31 in which the violation occurs, or in which the principal  
32 place of business of the provider is located. The  
33 proceeding under this section shall conform with the  
34 requirements of Chapter 3 (commencing with Section  
35 525) of Title 7 of Part 2 of the Code of Civil Procedure,  
36 except that no undertaking shall be required of the  
37 department in any action commenced under this section,  
38 nor shall the department be required to allege facts  
39 necessary to show lack of adequate remedy at law, or to  
40 show irreparable loss or damage.



1 *SEC. 64. Section 1793.31 of the Health and Safety*  
2 *Code is amended and renumbered to read:*

3 ~~1793.31.~~

4 *1794.30.* (a) The district attorney of every county  
5 may, upon application by the department or its  
6 authorized representative, institute and conduct the  
7 prosecution of any action for violation of this chapter  
8 within his or her county.

9 (b) This chapter shall not limit or qualify the powers  
10 of the district attorney to institute and conduct the  
11 prosecution of any action brought for the violation within  
12 his or her county of this chapter or any other provision of  
13 law, including, but not limited to, actions for fraud or  
14 misrepresentation.

15 (c) The department shall provide access to any  
16 records in its control on request of a district attorney and  
17 shall cooperate in any investigation by a district attorney.

18 *SEC. 65. Section 1793.50 of the Health and Safety*  
19 *Code is amended and renumbered to read:*

20 ~~1793.50.~~

21 *1795.* (a) The department, after consultation with  
22 the ~~Committee on~~ Continuing Care Contracts  
23 *Committee*, may petition the superior court for an order  
24 appointing a qualified administrator to operate a ~~facility~~  
25 *continuing care retirement community*, and thereby  
26 mitigate crisis situations wherein elderly residents are left  
27 without means for their support or moved without proper  
28 preparation, in any of the following circumstances:

29 (1) The provider is insolvent or in imminent danger of  
30 becoming insolvent.

31 (2) The provider is in a financially unsound or unsafe  
32 condition.

33 (3) The provider has failed to establish or has  
34 substantially depleted the reserves required by this  
35 chapter.

36 (4) A plan, as specified in Section ~~1793.13~~ *1794.12*, has  
37 not been approved by the department or the provider has  
38 failed to implement the plan approved by the  
39 department.



1 (5) The provider is unable to fully perform its  
2 obligations pursuant to continuing care contracts.

3 (6) The residents are otherwise placed in serious  
4 jeopardy.

5 (b) The administrator may only assume the operation  
6 of the ~~facility~~ *continuing care retirement community* in  
7 order to either rehabilitate the provider to enable it fully  
8 to perform its continuing care contract obligations,  
9 implement a plan of reorganization acceptable to the  
10 department, facilitate the transition if another provider  
11 assumes continuing care contract obligations, or facilitate  
12 an orderly liquidation of the provider.

13 (c) With each petition, the department shall include  
14 a request for a temporary restraining order to prevent the  
15 provider from disposing of or transferring assets pending  
16 the hearing on the petition.

17 (d) The provider shall be served with a copy of the  
18 petition, together with an order to appear and show cause  
19 why management and possession of the provider's ~~facility~~  
20 *continuing care retirement community* or assets should  
21 not be vested in an administrator.

22 (e) The order to show cause shall specify a hearing  
23 date, which shall be not less than five nor more than 10  
24 days following service of the petition and order to show  
25 cause on the provider.

26 (f) Petitions to appoint an administrator shall have  
27 precedence over all matters, except criminal matters, in  
28 the court.

29 (g) At the time of the hearing, the department shall  
30 advise the provider and the court of the name of the  
31 proposed administrator.

32 (h) If, at the conclusion of the hearing, including such  
33 oral evidence as the court shall consider, the court finds  
34 that any of the circumstances specified in subdivision (a)  
35 exist, the court shall issue an order appointing an  
36 administrator to take possession of the property of the  
37 provider and to conduct the business thereof, enjoining  
38 the provider from interfering with the administrator in  
39 the conduct of the rehabilitation, and directing the  
40 administrator to take steps toward removal of the causes



1 and conditions which have made rehabilitation  
2 necessary, as the court may direct.

3 (i) The order shall include a provision directing the  
4 issuance of a notice of the rehabilitation proceedings to  
5 the residents at the ~~facility~~ *continuing care retirement*  
6 *community* and to other interested persons as the court  
7 shall direct.

8 (j) The court may permit the provider to participate  
9 in the continued operation of the ~~facility~~ *continuing care*  
10 *retirement community* during the pendency of any  
11 appointments ordered pursuant to this section and shall  
12 specify in the order the nature and scope of the  
13 participation.

14 (k) The court shall retain jurisdiction throughout the  
15 rehabilitation proceeding and may issue further orders as  
16 it deems necessary to accomplish the rehabilitation or  
17 orderly liquidation of the ~~facility~~ *continuing care*  
18 *retirement community* in order to protect the residents  
19 of the ~~facility~~ *continuing care retirement community*.

20 *SEC. 66. Section 1793.52 of the Health and Safety*  
21 *Code is amended and renumbered to read:*

22 ~~1793.52. The department shall maintain a list of~~  
23 ~~qualified persons for use by the courts in appointing an~~  
24 ~~administrator pursuant to this article.~~

25 *1795.2. The court-appointed administrator shall*  
26 *immediately notify the residents of that appointment and*  
27 *of the status of the continuing care retirement*  
28 *community management.*

29 *SEC. 67. Section 1793.54 of the Health and Safety*  
30 *Code is amended and renumbered to read:*

31 ~~1793.54.~~

32 *1795.4. If an administrator is appointed to rehabilitate*  
33 *a provider, the administrator may do any of the following:*

34 (a) Take possession of and preserve, protect and  
35 recover any assets, books, records, or property of the  
36 provider, including, but not limited to, claims or causes of  
37 action belonging to, or which may be asserted by, the  
38 provider.

39 (b) Deal with the property in the administrator's  
40 name in the capacity as administrator, and purchase at



1 any sale any real estate or other asset upon which the  
 2 provider may hold any lien or encumbrance or in which  
 3 the provider may have an interest.

4 (c) File, prosecute, and defend or compromise any suit  
 5 or suits which have been filed, or which may thereafter  
 6 be filed, by or against the provider as necessary to protect  
 7 the provider or the residents or any property affected  
 8 thereby.

9 (d) Deposit and invest any of the provider's available  
 10 funds.

11 (e) Pay all expenses of the rehabilitation.

12 (f) Perform all duties of the provider in the provision  
 13 of care and services to residents in the ~~facility~~ *continuing*  
 14 *care retirement community* at the time the administrator  
 15 takes possession.

16 (g) Facilitate the orderly transfer of residents should  
 17 the provider ultimately fail.

18 (h) Exercise any other powers and duties as may be  
 19 authorized by law or provided by order of the court.

20 *SEC. 68. Section 1793.56 of the Health and Safety*  
 21 *Code is amended and renumbered to read:*

22 ~~1793.56.~~

23 *1795.6.* (a) Reasonable compensation shall be paid to  
 24 the administrator appointed.

25 (b) Costs for the compensation shall be levied against  
 26 the assets of the provider. *When facility assets are*  
 27 *insufficient, the department, in its discretion, may*  
 28 *compensate the administrator, from funds available from*  
 29 *the Continuing Care Provider Fee Fund.*

30 (c) Any individual appointed administrator, pursuant  
 31 to Section ~~1793.50~~ *1795*, shall be held harmless for any  
 32 negligence in the performance of his or her duties and  
 33 shall be indemnified by the provider for costs of  
 34 defending actions brought against him or her in his or her  
 35 capacity as administrator.

36 *SEC. 69. Section 1793.58 of the Health and Safety*  
 37 *Code is amended and renumbered to read:*

38 ~~1793.58.~~

39 *1795.8.* (a) The department, administrator, or any  
 40 interested person, upon due notice to the administrator,

1 at any time, may apply to the court for an order  
2 terminating the rehabilitation proceedings and  
3 permitting the provider to resume possession of the  
4 provider's property and the conduct of the provider's  
5 business.

6 (b) No order shall be granted pursuant to subdivision  
7 (a) except when, after a full hearing, the court has  
8 determined that the purposes of the proceeding have  
9 been fully and successfully accomplished and that the  
10 ~~facility~~ *continuing care retirement community* can be  
11 returned to the provider's management without further  
12 jeopardy to the residents of the ~~facility~~ *continuing care*  
13 *retirement community*, creditors, owners of the ~~facility~~  
14 *continuing care retirement community*, and to the  
15 public.

16 (c) An order terminating the rehabilitation  
17 proceeding shall be based upon a full report and  
18 accounting by the administrator of the conduct of the  
19 provider's officers, employees, and business during the  
20 rehabilitation and of the provider's current financial  
21 condition.

22 (d) Upon ~~issue~~ *issuance* of an order terminating the  
23 rehabilitation, the department shall reinstate the  
24 *provisional or final* certificate of authority and may ~~limit~~  
25 *condition*, suspend, or revoke the reinstated certificate  
26 only upon a change in the conditions at the time of the  
27 order or a determination of facts which, if such facts had  
28 been known at the time of the order, the court would not  
29 have entered the order as determined by the  
30 department.

31 *SEC. 70. Section 1793.60 of the Health and Safety*  
32 *Code is amended and renumbered to read:*

33 ~~1793.60.~~

34 *1795.10.* (a) If at any time the department  
35 determines that further efforts to rehabilitate the  
36 provider would not be in the best interest of the residents  
37 or prospective residents, or would not be economically  
38 feasible, the director may, with the approval of the  
39 ~~Committee on~~ *Continuing Care Contracts Committee*,  
40 apply to the court for an order of liquidation and



1 dissolution or may apply for other appropriate relief for  
2 dissolving the property and bringing to conclusion its  
3 business affairs.

4 (b) Upon ~~issue~~ *issuance* of an order directing the  
5 liquidation or dissolution of the provider, the department  
6 shall revoke the provider's *provisional or final* certificate  
7 *of authority*.

8 *SEC. 71. Section 1793.62 of the Health and Safety*  
9 *Code is amended and renumbered to read:*

10 ~~1793.62.~~

11 *1795.12.* (a) The department, administrator, or any  
12 interested person, upon due notice to the parties, may  
13 petition the court for an order terminating the  
14 rehabilitation proceedings when the rehabilitation  
15 efforts have not been successful, the ~~facility~~ *continuing*  
16 *care retirement community* has been sold at foreclosure  
17 sale, the provider has been declared bankrupt, or the  
18 provider has otherwise been shown to be unable to  
19 perform its obligations under the continuing care  
20 contracts.

21 (b) No order shall be granted unless all of the following  
22 have occurred:

23 (1) There has been a full hearing and the court has  
24 determined that the provider is unable to perform its  
25 contractual obligations.

26 (2) The administrator has given the court a full and  
27 complete report and financial accounting signed by the  
28 administrator as being a full and complete report and  
29 accounting.

30 (3) The court has determined that the residents of the  
31 ~~facility~~ *continuing care retirement community* have  
32 been protected to the extent possible and has made such  
33 orders in this regard as the court deems proper.

34 *SEC. 71. No reimbursement is required by this act*  
35 *pursuant to Section 6 of Article XIII B of the California*  
36 *Constitution because the only costs that may be incurred*  
37 *by a local agency or school district will be incurred*  
38 *because this act creates a new crime or infraction,*  
39 *eliminates a crime or infraction, or changes the penalty*  
40 *for a crime or infraction, within the meaning of Section*



1 *17556 of the Government Code, or changes the definition*  
2 *of a crime within the meaning of Section 6 of Article*  
3 *XIII B of the California Constitution.*

4 *Notwithstanding Section 17580 of the Government*  
5 *Code, unless otherwise specified, the provisions of this act*  
6 *shall become operative on the same date that the act*  
7 *takes effect pursuant to the California Constitution.*

8

9

**All matter omitted in this version of the  
bill appears in the bill as amended in the  
Assembly, April 17, 1995 (JR 11)**

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15 CORRECTIONS

16

17 **Digest — Pages 2 and 3.**

18 **Text — Pages 13, 20, 22, 30, 31, 32, 37, 38, 65, 68, 69, 80, and 90.**

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