AMENDED IN SENATE JULY 19, 1995

AMENDED IN SENATE JULY 5, 1995

AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 827

Introduced by Assembly Member Speier

February 22, 1995

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, 1789.2, 1789.4, 1789.6, 1789.8, 1790, 1791, 1792, 1792.2, 1793, 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 1793.8 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.

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 the fund, thereby making an appropriation. It would revise the requirement for an 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: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 1770 of the Health and Safety
2 Code is amended to read:
3 1770. The Legislature finds, declares, and intends all
4 of the following:
5 (a) Continuing care retirement communities are an
6 alternative for the long-term residential, social, and
7 health care needs of California's elderly residents, seek to
8 provide a continuum of care, minimize transfer trauma,
9 and allow for provision of services in an appropriately
10 licensed setting.
11 (b) Because elderly residents often expend a
12 significant portion of their savings in order to purchase
13 care in the retirement community and, thereby, expect
14 to receive care at the retirement community for the rest

of their lives, tragic consequences can result from a continuing care provider becoming insolvent or unable to provide responsible care.

(c) There is a need for disclosure concerning the terms of agreements made between prospective residents and the continuing care provider, and concerning the operations of the continuing care retirement community.

(d) Providers of continuing care should obtain a certificate of authority to enter into continuing care contracts and be monitored and regulated by the State Department of Social Services.

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

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

(g) Because the authority to enter into continuing care contracts granted by the State Department of Social Services is neither a guarantee of performance by the providers nor an endorsement of contract provisions, prospective residents must carefully consider the risks, benefits, and costs before signing a continuing care contract and should be encouraged to seek financial and legal advice before doing so.

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

1771. Unless the context otherwise requires, the definitions in this section govern the interpretation of this chapter.

(a) (1) ‘‘Affinity group’’ means a grouping of individuals sharing a common interest, philosophy, or connection (e.g., military officers, religion, etc.).

(2) ‘‘Annual report’’ means audited financial statements and reserve calculations (as required by Sections 1792.2 and 1793), with accompanying certified public accountant’s opinions thereon, resident lists, evidence of fidelity continuing care bond, and certification that the contract in use for new residents has been approved by the department, all to be submitted to

the department by each provider annually, as required by Section 1790.

(3) ‘‘Applicant’’ means any entity that submits an application to the department for a permit to sell deposit subscriptions and certificate of authority.

(b) [reserved]

(c) (1) ‘‘Cancellation’’ means to destroy the force and effect of an agreement or continuing care contract, by making or declaring it void or invalid.

(2) ‘‘Cancellation period’’ means the 90-day period, beginning when the transferor signs the continuing care contract, during which time the resident or transferor may rescind the continuing care contract.

(3) ‘‘Care’’ means nursing, medical, or other health related services, protection or supervision, or assistance with the personal activities of daily living, or any combination of those services.

(4) ‘‘Cash equivalent’’ means certificates of deposit and United States treasury securities with a maturity of five years or less. Possession and control of any of these instruments shall be transferred to the escrow agent or depository at the time the deposit is paid.

(5) ‘‘Certificate’’ or ‘‘certificate of authority’’ means the written authorization from the department for a specified provider to enter into one or more continuing care contracts at a single specified continuing care retirement community.

(6) ‘‘Condition’’ means a restriction or required action placed on a provisional or final certificate of authority by the department. A condition may limit the circumstances under which the provider may enter into any new contract, or may be a condition precedent to the issuance of a final certificate of authority.

(7) ‘‘Consideration’’ means some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.

(8) ‘‘Continuing care contract’’ means a written contract, which includes a promise, expressed or implied, by a provider to provide one or more elements of care to

an elderly resident for the duration of his or her life or for a term in excess of one year, in exchange for the payment of an entrance fee, or payment of periodic charges, or both types of payments. A continuing care contract may consist of one or a series of agreements and may have other writings incorporated by reference. A life care contract, as defined in paragraph (1) of subdivision (*l*) is a type of continuing care contract.

(9) ‘‘Continuing care contract committee’’ means an advisory panel appointed pursuant to Section 1777.

(10) ‘‘Continuing care retirement community’’ (CCRC) means a facility where services promised in a continuing care contract are provided. A distinct phase of development approved by the department may be considered to be the continuing care retirement community when a project is being developed in successive multiple phases over a period of time. When the services are provided in a resident’s own home, the homes into which the provider takes those services collectively are considered part of the community.

(11) ‘‘Control’’ means the power to direct or cause the direction of the management and policies of an operator of a continuing care retirement community, whether through the ownership of voting securities, by contract or otherwise. A parent or sole corporate member of a corporation may exhibit control of the operator of the continuing care retirement community through direct participation in the initiation or approval of policies directly affecting the operations, including, but not limited to, approval of budgets or approval of the continuing care retirement community administrator.

(d) (1) ‘‘Department’’ means the State Department of Social Services.

(2) ‘‘Deposit subscription’’ means cash or cash equivalent payment made by a subscriber to an applicant and the escrow agent prior to the release of escrow during development or construction of a continuing care retirement community.

(3) ‘‘Deposit subscription agreement’’ means a written contract in compliance with Section 1780.4

entered into between the transferor and applicant. This agreement allows an applicant to accept deposit subscriptions prior to the issuance of a provisional certificate of authority.

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

(5) ‘‘Director’’ means the Director of the State Department of Social Services.

(e) (1) ‘‘Elderly’’ means an individual who is 60 years of age or older.

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

(3) ‘‘Entrance fee’’ means an initial or deferred transfer of consideration made or promised to be made by a person entering into a continuing care contract, for the purpose of assuring care or related services pursuant to that continuing care contract or as full or partial payment for the promise to provide one or more elements of care for the term of the continuing care contract. An entrance fee includes the purchase price of a condominium, cooperative, or other interest sold in connection with a promise of continuing care. The entrance fee may include a previously paid deposit subscription, which is credited to the total entrance fee due at the time the transferor signs the continuing care contract. An entrance fee that is greater than 12 times the monthly fee shall be presumed to imply a promise to provide care for more than one year. The term ‘‘accommodation fee’’ may be synonymously used to mean an entrance fee.

(4) ‘‘Equity’’ means the residual value of a business or property beyond any mortgage or deed of trust thereon and liability therein.

(5) ‘‘Equity project’’ means a continuing care development project wherein the transferors are given an equity interest in the continuing care retirement community property or in a transferable membership in a resident’s association.

(6) ‘‘Escrow agent’’ means a bank or institution, including, but not limited to, a title insurance company, approved by the department as capable of ensuring the safety of the funds and properties entrusted to it and capable and willing to perform the terms of the escrow pursuant to the escrow agreement and the provisions of this chapter.

(f) (1) ‘‘Facility’’ means any place or accommodation in which a provider undertakes to provide a resident with care or related services, whether or not the place or accommodation is constructed, owned, leased, rented, or otherwise contracted for by the provider.

(g) [reserved]

(h) [reserved]

(i) ‘‘Inactive certificate of authority’’ means a certificate which has been declared inactive under Section 1793.8 and renders its holder no longer authorized to enter into continuing care contracts, but still contractually obligated to continuing care residents and statutory compliance requirements.

(j) [reserved]

(k) [reserved]

(*l*) (1) ‘‘Life care contract’’ means a continuing care contract which includes a promise, expressed or implied, by a provider to provide routine services at all levels of care; including acute care and physicians and surgeons’ services, to a resident for the duration of his or her life. Care shall be provided in a continuing care retirement community having a comprehensive continuum of care, including a skilled nursing facility, under the ownership and supervision of the provider on, or adjacent to, the premises. In a life care contract, no change is made in the

monthly fee based on level of service. A life care contract shall also include provisions to subsidize residents who become financially unable to pay their monthly care fees.

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

(m) (1) ‘‘Monthly care fee’’ means the monthly charge to a resident for accommodations and services rendered, including care, board, or lodging, and any other periodic charges to the resident, determined on a monthly or other recurring basis, pursuant to the provisions of a continuing care contract. Monthly care fees are exclusive of periodic entrance fee payments or other prepayments.

(2) ‘‘Monthly fee contract’’ means a continuing care contract that provides by its terms for the monthly payment of a fee for accommodations and services rendered.

(n) (1) ‘‘Nonambulatory person’’ means a person who is unable to leave a building unassisted under emergency conditions, as required by Section 13131.

(o) [reserved]

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

(2) ‘‘Permit to sell deposit subscriptions’’ means a written authorization by the department for an applicant to enter into one or more deposit subscription agreements at a single specified location.

(3) ‘‘Personal care’’ means assistance with personal activities of daily living, including dressing, feeding, toileting, bathing, grooming, mobility, and associated tasks, to help provide for and maintain physical and psychosocial comfort.

(4) ‘‘Personal care unit’’ means the living unit within a physical area of a continuing care retirement community specifically designed to provide ongoing

personal care. A personal care unit is synonymous with an assisted living unit.

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

(6) ‘‘Processing fee’’ means a payment by the transferor to cover administrative costs of processing the application of a subscriber or prospective resident.

(7) ‘‘Promise to provide care’’ means any expressed or implied representation that care will be provided or will be available, such as by preferred access, whether the representation is part of a continuing care contract, other agreement, or series of agreements, or contained in any advertisement, brochure, or other material, either written or oral.

(8) ‘‘Proposes’’ means a representation that an applicant or provider plans to make a future promise to provide care, which may be subject to the happening of certain events, such as continuing care retirement community construction or obtaining a certificate of authority.

(9) ‘‘Provider’’ means an entity which provides, promises to provide, or proposes to promise to provide, care for life or for more than one year. A provider shall include any entity that controls the entity that promises care as determined by the department. Homeowner’s associations, cooperatives, or condominium associations shall not be providers.

(10) ‘‘Provisional certificate of authority’’ means written authorization by the department that allows the provider to enter into continuing care contracts. This provisional certificate is issued after the conditions defined in Section 1786 have been met and is issued for a term defined under subdivision (b) of Section 1786.

(q) [reserved]

(r) (1) ‘‘Refundable reserve’’ means the amount calculated to ensure the availability of funds for specified refunds of entrance fees.

(2) ‘‘Refundable contract’’ means a continuing care contract form that includes promises, expressed or

implied, to pay refunds of entrance fees or to repurchase the transferor's unit, membership, stock, or other interest in the continuing care retirement community when the specified refund right is not fully amortized by the end of the sixth year of residency. A lump sum payment to a resident after termination of a continuing care contract that is conditioned upon resale of a unit shall not be considered a refund and shall not be advertised as a refund.

(3) ''Reservation fee'' means cash received by an applicant from an interested individual during a market test feasibility study, which complies with subdivision (b) of Section 1771.6.

(4) ''Resident'' means a person who enters into a continuing care contract with a provider, or who is designated in a continuing care contract to be a person being provided or to be provided services, including care, board, or lodging.

(5) ''Residential care facility for the elderly'' means a housing arrangement as defined by Section 1569.2.

(6) ''Residential living unit'' means a living unit in a continuing care retirement community which is included in the residential care facility for the elderly license capacity, but not used exclusively for personal care or nursing services.

(s) ''Subscriber'' means a person who has applied to be a resident, in a continuing care retirement community under development or construction, and who has entered into a deposit subscription agreement.

(t) (1) ''Termination'' means the ending of a continuing care contract as provided for in the terms of the continuing care contract.

(2) ''Transfer'' means conveyance of a right, title, or interest.

(3) ''Transfer fee'' means a levy by the provider against the proceeds from the sale of a transferor's equity interest.

(4) ''Transfer trauma'' means death, depression, or regressive behavior, caused by the abrupt and involuntary transfer of an elderly resident from one home

to another, resulting in a loss of familiar physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, and the major loss of visits from friends and relatives who may be unable to reach the new facility.

(5) ‘‘Transferor’’ means a person who transfers or promises to transfer a sum of money or property for the purpose of assuring care or related services pursuant to a continuing care contract, whether for the benefit of the transferor or another.

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

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

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

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

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

(e) Homeowner's associations, cooperatives, or condominium associations shall not be providers.

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

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

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

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

(1) Permit the formation of a resident council by interested residents, provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to permit a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The council may, among other things, make recommendations to management regarding resident issues which impact their quality of life. Proper notice shall be provided of all council meetings and the meetings shall be open to all residents to attend as well as present issues when prearranged with the council president. Executive sessions of the council shall be for attendance only by council members.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management and access to the board of directors or general partners. The policies and procedures shall be evaluated at a minimum of every two years by the continuing care retirement community administration to

determine their effectiveness in maintaining meaningful resident/management relations.

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

(c) Failure to comply with this section shall be grounds for suspension, condition, or revocation of the provisional or final certificate of authority pursuant to Section 1793.21.

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

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

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

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

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

(1) An application for a permit to sell deposit subscriptions and a certificate of authority for the project has been filed with, and the receipt has been acknowledged in writing by, the department.

(2) The amount of each reservation fee does not exceed 1 percent of the average entrance fee.

(3) The reservation fee is placed in escrow.

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

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

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

1771.8. (a) Any entity which believes its project is not subject to this chapter or which is contemplating a project which it believes may not be subject to this chapter, may apply to the department for a Letter of Non-applicability.

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

(1) A nonrefundable one thousand dollar ($1,000) application fee.

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

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

(4) Copies of all advertising material.

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

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

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

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

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

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

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

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

1772. (a) Except as otherwise provided in paragraph (5) of subdivision (a) of Section 1788, no report, circular, public announcement, certificate, financial statement, or

any other printed matter or advertising material, or oral representation, that states or implies that any entity sponsors, guarantees, or assures the performance of any continuing care contract, shall be published or presented to any prospective resident unless the entity files with the department a written and legally sufficient document of acceptance of full financial responsibility for each continuing care contract. Each entity shall be listed as a provider on the certificate of authority and shall be cosigner on the continuing care contracts.

(1) Implied sponsorship includes the use of the name of an entity for the purpose of implying that the entity's reputation may be relied upon to determine the likelihood of success of the proposed continuing care retirement community.

(2) Any implication that the entity may be financially responsible for these contracts may be rebutted by a conspicuous statement in each continuing care contract and marketing materials that clearly inform the transferor that the entity is not financially responsible.

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

(c) If the name of any entity, including, but not limited to, a religion, is used in connection with the development, marketing, or continued operation of a continuing care retirement community, but that entity does not actually own, control, manage, or otherwise operate the facility, the providers shall expressly disclose this lack of affiliation in the continuing care contract.

(d) All printed advertising materials, including brochures, circulars, public announcements, and similar publications pertaining to continuing care shall identify the current status of the continuing care retirement community as follows: (1) If a certificate of authority has not been issued, then specify whether the application for

continuing care has been filed, permit to sell deposit subscriptions issued, or provisional certificate of authority issued.

(2) If a certificate of authority has been issued, specify the providers' certificate of authority number.

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

1773. No certificate of authority has value for sale or exchange as property. No provider shall sell or transfer ownership of the continuing care retirement community or enter into a contract with a third party entity for management of the continuing care retirement community without the approval of the department. Violation of this section is grounds for revocation of the certificate of authority.

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

1775. (a) To the extent that this chapter conflicts with the statutes, regulations, or interpretations enforced by the Department of Real Estate, this chapter as interpreted by the department shall have precedence.

(b) Notwithstanding any law or regulation to the contrary, in any continuing care retirement community the provider may restrict or abridge the right of any resident, whether or not he owns an equity interest, to sell, lease, encumber, or otherwise convey any interest in the resident's unit, and may require that the resident only sell, lease, or otherwise convey the interest to persons approved by the provider. Provider approval may be based on factors which include, but are not limited to, age, health status, insurance risk, financial status, or burden on the provider's personnel, resources, or physical facility. Any restrictions on a real property interest shall be recorded by the provider.

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

(d) This chapter imposes minimum requirements upon any entity undertaking the responsibility for

providing one or more elements of care to an elderly person for the duration of his or her life or for a term in excess of one year, in exchange for any prepayment or transfer of property prior to the services actually being rendered, whether or not the prepayment or transfer of property is supplemented with periodic or other payments.

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

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

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

1776.2. The department may, by any duly authorized representative, inspect and examine any continuing care retirement community, including the books and records thereof, or the performance of any service required by the continuing care contracts.

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

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

(b) The members of the committee shall include:

(1) Three representatives of nonprofit continuing care providers pursuant to this chapter, each of whom shall have offered continuing care services for at least five years prior to appointment. One member shall represent a multifacility provider and shall be appointed by the Governor in even years. One member shall be appointed by the Senate Committee on Rules and shall be appointed in odd years. One member shall be appointed by the

Speaker of the Assembly and shall be appointed in odd years.

(2) Three senior citizens who are not eligible for appointment pursuant to paragraphs (1) and (4) who shall represent consumers of continuing care services, at least two of whom shall be residents of continuing care retirement communities but not residents of the same provider. One member shall be appointed by the Governor and shall be appointed in even years. One member shall be appointed by the Senate Committee on Rules and shall be appointed in odd years. One member shall be appointed by the Speaker of the Assembly and shall be appointed in odd years.

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

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

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

(c) Commencing January 1, 1997, all members shall serve two-year terms and be appointed based on their interest and expertise in the subject area. The Governor shall designate the chairperson for the committee with the advice and consent of the Senate. A member may be reappointed at the pleasure of the appointing power. It shall be the duty of the appointing power to fill all vacancies on the committee within 60 days. These members shall continue to serve until their successors are appointed and qualified.

(d) The members of the committee shall serve without compensation, except that each member shall be paid from the Continuing Care Contract Provider Fee Fund a per diem of twenty-five dollars ($25) for each day's attendance at a meeting of the committee not to exceed six days in any month. The members of the

committee shall also receive their actual and necessary traveling expenses incurred in the course of their duties.

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

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

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

1777.2. (a) The Continuing Care Contracts Committee shall:

(1) Review the financial and managerial condition of each continuing care retirement community operating under a certificate of authority.

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

(3) Monitor the condition of continued care retirement communities as the department or the chair of the committee may direct.

(4) Make available consumer information on the selection and necessary contract protections in the purchase of continuing care contracts.

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

(6) The Continuing Care Contracts Committee of the department, in consultation with residents and providers shall, by December 31, 1997, advise the department of its suggestions to protect continuing care retirement communities and residents from the financial consequences caused by earthquakes and other natural disasters. This paragraph shall become inoperative on January 1, 1998.

(b) The committee shall make recommendations to the department regarding needed changes in its rules and regulations and upon request provide advice regarding the feasibility of new continuing care retirement communities and the correction of problems relating to the management or operation of any continuing care retirement community. The committee shall also perform any other advisory functions necessary to improve the management and operation of continuing care retirement communities.

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

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

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

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

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

1778. (a) There is hereby created in the State Treasury a fund which shall be known as the Continuing Care Provider Fee Fund. The fund shall consist of fees received by the department pursuant to this chapter. Notwithstanding Section 13340 of the Government Code, the Continuing Care Provider Fee Fund is hereby continuously appropriated to the department, without regard to fiscal years.

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

(1) Program personnel salary costs, to include but not be limited to: Continuing Care Contracts Program Manager, appointed at a Staff Services Manager III level

or above; Financial Analyst; two Staff Services Analyst/Associate Governmental Program Analyst; Office Technician; and legal support to include one full-time Senior Staff Counsel or above.

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

(3) Other program costs or costs directly supporting program staff.

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

(c) If the balance in the Continuing Care Provider Fee Fund is projected to exceed five hundred thousand dollars ($500,000) for the next budget year, the department shall adjust the calculations for the application fees under Section 1779.2 and annual fees under Section 1791 to reduce the amounts collected.

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

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

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

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

(2) Prior to initiating construction of a prospective continuing care continuing care retirement community.

(3) Prior to initiating construction on a new phase or expansion of an existing continuing care retirement community. An expansion has occurred when there is an increase in Residential Care Facility for the Elderly license capacity, an increase in the number of units at the

continuing care retirement community, an increase in the number of skilled nursing beds, or additions to or replacement of existing continuing care retirement community structures that affects obligations to current residents. The department has the discretion to eliminate all or portions of the application contents required under Section 1779.4 for an expansion of an existing continuing care retirement community.

(4) Prior to converting an existing structure to a continuing care retirement community.

(5) Prior to recommencing marketing on a planned facility when the applicant has previously forfeited a permit to sell deposit subscriptions pursuant to Section 1793.7.

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

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

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

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

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

1779.2. (a) A formal application shall be made by a person or organization to the department for a permit to sell deposit subscriptions and certificate of authority, as provided in this chapter.

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

(c) The application shall be signed under penalty of perjury by the applicant. If the applicant is a corporation, the chief executive officer shall sign the application and certify that to the best of his or her knowledge and belief, the items are correct. If the applicant is a partnership, each general partner shall sign the application and certification. If there are multiple applicants, the above requirements apply to each.

(d) An application fee shall be required whenever a provider applies for a permit to sell deposit subscriptions and certificate of authority.

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

(1) Each application shall be accompanied by payment to the Continuing Care Provider Fee Fund of 80 percent of the application fee for all currently planned phases. Processing of the application shall not begin until this fee is received.

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

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

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

(2) Payment to the Continuing Care Provider Fee Fund of the remainder of the application fee shall be made at or before the time of issuance of the provisional certificate of authority. The application fee shall be

calculated as one-tenth of 1 percent of the purchase price of the continuing care retirement community, or the actual construction cost, including the purchase price of the land or the present value of any long-term lease, less the payment included with the application. The provisional certificate of authority shall not be issued until the balance of the fee is paid.

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

1779.4. An application shall contain all of the following:

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

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

(c) The name, address, and a description of the real property of the continuing care retirement community.

(d) The estimated number of continuing care residents of the continuing care retirement community.

(e) A description of the proposed continuing care retirement community, including the services and care to be available for residents or provided to residents, or both.

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

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

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

(i) A description of any matter in which any principal involved with the proposed continuing care retirement community has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or

enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property. For the purpose of this paragraph, ‘‘principal’’ means any representative of the developer or applicant including a general partner, chief executive officer, or chief operating officer who has significant decisionmaking authority with respect to the proposed continuing care retirement community.

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

(1) A statement naming the type of legal entity and listing the interest and extent of the interest of each principal in the legal entity. For the purposes of this paragraph, ‘‘principal’’ means any person or entity having a 10 percent or more financial interest in the legal entity. When the application is submitted in the name of a corporation, the parent, sole corporate shareholder, or sole corporate member shall be listed as an applicant, when that parent or sole corporate member controls the operation of the continuing care retirement community. When multiple corporate applicants exist, they shall be listed jointly by corporate name on the application, and the certificate of authority shall be issued in the joint names of the corporations. When the application is submitted by a partnership, all general partners shall be listed as applicants and the certificate of authority shall be issued in the joint names of the general partners.

(2) The names of the members of the board of directors, the trustees, the general partners, or other responsible officers of the legal entity.

(3) A statement as to whether the applicant was or is affiliated with a religious, charitable, nonprofit or for-profit organization, and the extent of any affiliation. The statement shall also include the extent, if any, to which the affiliate organization will be responsible for the financial and contract obligations of the applicant and shall be signed by a responsible officer of the affiliate organization.

(4) A statement identifying any parent corporation or other affiliate corporation, the primary activities and the interest in the applicant held by each entity.

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

(6) A statement as to whether the applicant, a principal, a parent, affiliate, or subsidiary corporation, or any other affiliate entity, or any responsible employee, manager, board member, or anyone who otherwise profits from the continuing care retirement community, has had applied against it, any injunctive or restrictive order of a court of record, or any suspension or revocation of any state or federal license, permit, or certificate, arising out of or relating to business activity of health or nonmedical care, including, but not limited to, actions affecting a license to operate a health care institution, a nursing home, an intermediate care facility, a hospital, or a home health agency, residential care facility for the elderly, community care facility, or child day care facility.

(k) A description of the business experience of the applicant in the operation or management of similar facilities.

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

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

(n) Copies of the proposed continuing care contracts to be entered into with residents of the continuing care retirement community.

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

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

(q) Copies of all escrow agreements.

(r) A statement of any periodic fees to be paid by residents, the components and services considered in determining such fees, and the manner by which the provider may adjust these fees in the future. If the continuing care retirement community is already in

operation, or if the provider operates one or more similar continuing care retirement communities within this state, the statement shall include tables showing the frequency and each percentage increase in periodic rates at each continuing care retirement community for the previous five years, or such shorter period as each continuing care retirement community may have been operated by the provider or his or her predecessor in interest.

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

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

(u) Unaudited interim financial statements shall be included if the applicant's fiscal year ended more than 90 days prior to the date of filing. The statements shall be either quarterly or monthly, prepared on the same basis as the annual audited financial statements or other basis acceptable to the department. The period between the end of the most recent fiscal year for which audited financial statements are submitted and a date not more than 90 days prior to the date the application is filed shall be covered in the unaudited interim financial statements.

(v) A financial and marketing feasibility study prepared by a firm acceptable to the department. The

study shall include or address, as appropriate, all of the following items:

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

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

(A) A description of any mortgage loan or other long-term financing intended to be used for the financing of the continuing care retirement community, including the anticipated terms and costs of the financing. This indebtedness shall not exceed the appraised value of the continuing care retirement community.

(B) Equity to be contributed by the applicant.

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

(D) An estimate of the cost of purchasing, leasing, renting, designing, or constructing and equipping the continuing care retirement community, including, but not limited to, such related costs as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs which the provider expects to incur, or become obligated for, prior to the commencement of operation.

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

(F) An estimate of any proposed continuing care retirement community reserves required for items such as debt service, insurance premiums, and operations.

(G) An estimate of any funds which are anticipated to be necessary to fund startup losses and to assure full performance of the obligations of the provider pursuant

to continuing care contracts, including, but not limited to, any reserve fund escrow.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The projected annual cash-flow statements shall be submitted, using prevailing rates of interest, with no increase of revenues and expenses due to inflation, as one set of assumptions.

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

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

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

(iii) Contractual cash-flows from activities, including, but not limited to, presales, deposit subscription receipts, and entrance fee receipts less contract acquisition, marketing, and advertising expenditures.

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

(v) Cash-flow from investment activities, including, but not limited to, construction progress payments, architect and engineering, furnishings, and equipment not included in the construction contract, project

development, inspection and testing, marketable securities, investment earnings, and interfund transfers.

(vi) Increase or decrease in cash during the projection period.

(vii) The beginning cash balance, which means cash, marketable securities, reserves, and other funds on hand available and committed to the proposed continuing care retirement community.

(viii) Cash balance at the end of the period.

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

(3) If the cash-flow statements required by paragraph (B) indicate that the provider will have cash balances over and above two months' projected operating expenses of the continuing care retirement community, a description of the manner in which the cash balances will be invested, and the persons who will be making the investment decisions, shall accompany the application.

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

(x) A declaration acknowledging the requirement of executing and recording a Notice of Statutory Limitation on Transfer (hereinafter referred to as the notice), relating to continuing care retirement community property pursuant to this section.

(1) The notice shall be acknowledged so as to entitle it to be recorded, describe the property, declare the applicant's intention to use all or part of the described property for the purposes of a continuing care continuing care retirement community pursuant to this chapter, and shall be in substantially the following form:

NOTICE OF STATUTORY LIMITATION ON TRANSFER

Notice is hereby given that the property described below is licensed, or proposed to be licensed, for use as a continuing care retirement community and accordingly, the use and transfer of the property is subject to the conditions and limitations as to use and transfer set forth in Sections 1773 and 1789.4 of the Health and Safety Code. This notice is recorded pursuant to subdivision (x) of Section 1779.4 of the Health and Safety Code.

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

(2) The notice shall remain in effect until notice of release is given by the State Department of Social Services Continuing Care Contract Branch. The State Department of Social Services Continuing Care Contracts Branch shall execute and record a release of the notice upon proof of complete performance of all obligations to transferors.

(3) Unless a notice has already been recorded with respect to the land on which the applicant or provider is operating or intends to operate a continuing care retirement community, prior to the date of execution of any trust deed, mortgage, or any other lien or encumbrance, securing or evidencing the payment of money and affecting land on which the applicant or provider intends to operate a continuing care retirement community, the applicant or provider shall give the department written notice of the proposed encumbrance. Upon the giving of notice to the department, the applicant or provider shall execute and record the Notice of Statutory Limitation on Transfer in the office of the county recorder in each county in which any portion of the continuing care retirement community is located.

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

(5) The notice shall be indexed by the recorder in the grantor-grantee index to the name of the owner of record and the name of the applicant or provider.

(y) A statement that the applicant will keep the department informed of any material changes to the proposed continuing care retirement community plan as reflected in the application form and attachments.

(z) Any other information as may be required by the department for the proper administration and enforcement of this chapter.

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

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

(b) Within 30 calendar days of receipt of an application, the department shall determine if the application is complete. This review need not include a review of the adequacy of the documentation submitted. Based on this review, the department shall do one of the following:

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

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

(c) Within 120 calendar days after the department determines that an application is complete, the department shall act to approve the application or determine the application is inadequate, notify the applicant of the specific deficiency and code references and give the applicant an opportunity to respond.

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

(1) Review the application for adequacy.

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

(3) Review the financial plan for feasibility.

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

(d) Within 30 calendar days after its receipt of any additional information or clarification required from the applicant, the department shall respond to the applicant's submission in writing, including its determination whether each specific deficiency has been addressed and whether the application is adequate. If the department determines that the application is adequate and in compliance with this chapter, the department shall act to issue the permit to sell deposit subscriptions. If the department determines that the response is inadequate, it may request additional information or clarification from the applicant pursuant to subdivision (c) or deny the application pursuant to Section 1779.10.

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

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

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

(c) Within 30 calendar days after receiving notice of the proposed change, the department shall inform the applicant of any additional or amended information needed to process the pending application, or whether a new application and application fee must be submitted. The new application fee shall be twice the actual cost of additional consultant review time caused by the change.

This additional fee is payable to the department on demand.

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

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

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

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

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

(3) Failure to submit evidence to support a reasonable belief that any principal of the proposed continuing care retirement community who has committed any offenses listed in subdivision(i) of Section 1779.4 is of such good character to indicate rehabilitation.

(4) If an action specified in subdivision (h) or (j) of Section 1779.4 has been taken against an applicant and the applicant has failed to submit evidence to support a reasonable belief that the applicant is capable of administering the continuing care retirement community in compliance with applicable laws and regulations.

(5) Failure to demonstrate the feasibility of the proposed continuing care retirement community plan.

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

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

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

(1) State that the application is denied.

(2) List the reasons for the denial.

(3) Explain the right of appeal.

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

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

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

1780. The department shall issue a permit to sell deposit subscriptions when it has:

(a) Determined that the application is complete.

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

(c) Reviewed and approved the deposit subscription agreement.

(d) Reviewed and approved the escrow agreement.

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

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

A deposit subscription shall be paid by cash or cash equivalent, jointly payable to the applicant and the escrow agent or depository. Possession and control of any such instrument must be transferred to the escrow agent at the time the deposit is paid.

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

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

(2) A nonrefundable processing fee may be paid directly to the applicant without being placed in the escrow account.

(c) Payments made to the applicant from a subscriber for upgrades or modifications to the living unit shall not be placed in escrow with deposit subscriptions. Written refund policies shall be given to the subscriber.

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

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

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

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

(d) All text in deposit subscription agreement forms shall be printed in at least 10-point typeface.

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

(1) An estimated date for commencement of construction of the proposed continuing care retirement community or each phase, if applicable, not to exceed 36 months from the date the permit to sell deposit subscriptions is issued.

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

(3) Processing fee terms and conditions, including:

(A) The amount.

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

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

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

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

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

(7) A statement to subscribers that specifies when funds may be released from escrow and explains that thereafter subscriber funds will not have escrow protection.

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

(f) A schedule of projected monthly care fees estimated to be charged to residents for each of the first five years of the facility's existence shall be attached to each deposit subscription agreement. The schedule shall contain a conspicuous statement in at least 10-point boldface type that the projected fees are an estimate only and may be changed without notice.

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

1781. (a) All deposit subscriptions, excluding processing fees, shall be placed in an escrow account, the terms of which must be approved in advance by the department.

(b) The escrow account shall be established by an escrow agent and the deposit subscription deposited in a depository approved by the department and located in California. The funds deposited therein shall be kept and maintained in an account separate and apart from the applicant's business accounts.

(c) The escrow agent may be the same entity as the depository. If the escrow agent is a title company, it shall meet the following requirements:

(1) A Standard and Poors rating of "A" or better or a comparable rating from a comparable rating service.

(2) Licensure in good standing with the Department of Insurance.

(3) Tangible net equity as required by the Department of Insurance.

(4) Reserves as required by the Department of Insurance.

(d) Funds shall remain in escrow until the department has authorized their release in accordance with Section 1783.2.

(e) Deposit subscriptions shall be invested in instruments guaranteed by, or agencies of, the federal government or by investment funds secured by federally guaranteed instruments.

(f) No funds deposited in an escrow account shall be subject to any liens, judgments, garnishments, or creditor's claims against the applicant or continuing care retirement community. Neither shall these funds be subject to any liens or charges by the escrow agent, except transaction fees, commissions, prepayment penalties, and other fees incurred in connection with the payment of cash equivalent deposit subscriptions.

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

1781.2. (a) Payments pursuant to deposit subscriptions shall be deposited with the escrow agent within five business days after their receipt from subscribers and shall be accounted for in a separate escrow account.

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

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

1781.4. The escrow agreement between the applicant and the escrow agent shall provide for all of the following:

(a) The amount of the processing fee.

(b) Deposit of funds in the escrow account.

(c) Monthly progress reports, beginning the month after the escrow account is opened and ending after funds are released from escrow, to be sent by the escrow agent directly to the department. These reports shall show each of the following in separate columns:

(1) The name and address of each subscriber or resident.

(2) The designation of the living unit being provided.

(3) Any processing fee which is deposited into escrow.

(4) The total deposit subscription for the unit.

(5) The total entrance fee for the unit.

(6) Twenty percent of the total entrance fee.

(7) Each payment made towards the deposit or refund given.

(8) The unpaid balance of each deposit subscription.

(9) The unpaid balance of each entrance fee.

(10) The current balance in the escrow account.

(11) The dollar amount, type, and maturity date of any cash equivalent.

(d) Investment of escrow account funds.

(e) Release of escrow account funds as specified in Section 1783.2, including to whom payment of interest earned on such funds will be made.

(f) The escrow agreement shall state that the escrow agent for the proposed continuing care retirement community shall neither be a lender nor have fiduciary responsibilities to lenders or bondholders for that continuing care retirement community.

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

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

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

(c) Approval by the department of the release of earnings from funds in escrow shall be based upon an assessment that funds remaining in the escrow account will be sufficient to pay refunds and interest promised, if

any, to all subscribers, and all escrow agent administrative costs.

(d) Interest shall be distributed in accordance with the terms of the deposit subscription agreement.

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

1782. (a) An applicant shall not begin construction of a continuing care retirement community without the written acknowledgment of the department that all of the following prerequisites have been met:

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

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

(3) At least 20 percent of each applicable entrance fee has been received for at least 50 percent of the number of residential living units to be constructed.

(A) Paragraph (3) shall apply to all applications that are submitted after May 31, 1995.

(B) For applications submitted on or before May 31, 1995, at least 20 percent of each applicable entrance fee shall be received for at least 60 percent of residential units projected to be occupied 6 months after the continuing care retirement community is opened for operation.

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

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

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

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

(b) If existing buildings are to be converted to a continuing care use, the applicant shall comply with all

application requirements necessary to assess the feasibility of the proposed continuing care retirement community as determined by the department pursuant to Section 1779.4; provided, however, that the department may waive or modify the presales requirements of subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Section 1783.2 and paragraph (2) of subdivision (a) of Section 1786 if the facility is already occupied. This section shall not apply to expansions of existing continuing care retirement communities.

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

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

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

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

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

(b) Releases to applicants shall be as follows:

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

(A) The construction of the continuing care retirement community is at least 50 percent completed.

(B) At least 20 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 60 percent of the total number of residential living units. Any units for which a refund is pending cannot be counted towards that 60 percent requirement.

(C) All cash equivalent deposit subscriptions have been liquidated.

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

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

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

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

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

(C) The applicant has complied with all applicable licensing requirements in a timely manner.

(D) The applicant has obtained a commitment for any permanent mortgage loan or other long-term financing that is satisfactory to the department.

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

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

1784. (a) If construction of the proposed continuing care retirement community, or applicable phase, has not commenced within 36 months from the date the permit to sell deposit subscriptions is issued, an applicant may request an extension of the permit to sell deposit subscriptions. The request for extension shall be made to the department in writing and shall include the reasons why construction of the proposed continuing care retirement community was not commenced within the 36-month time period, and the new estimated date for commencement of construction.

(b) In response to a request for an extension, the department may do one of the following:

(1) If the department determines there is satisfactory cause for the delay in commencement of construction of the proposed continuing care retirement community, the department may extend the permit to sell deposit subscriptions for a one-year period.

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

(c) Within 10 calendar days the applicant shall notify each subscriber of the department's approval or denial of the extension, of any expiration of the permit to sell deposit subscriptions, and of any right to a refund of their deposit subscription.

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

1785. (a) If, at any time prior to issuance of a certificate of authority, the applicant's average performance over any six-month period does not substantially equal or exceed the applicant's projections for that period, the department, after consultation and upon consideration of the recommendations of the

Continuing Care Contracts Committee, may take any of the following actions:

(1) Cancel the permit to sell deposit subscriptions.

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

(3) Increase the reserve requirements under this chapter.

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

(c) In making its determination, the department shall take into consideration the overall performance of the proposed continuing care retirement community to date.

(d) If deposit subscriptions have been released from escrow, the department may further require the applicant to reopen the escrow as a condition of receiving any further entrance fee payments from subscribers or residents.

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

1786. (a) In order to permit an applicant to become a provider and enter into continuing care contracts, the department shall issue a provisional certificate of authority when a provider has done all of the following:

(1) Complied with the approved marketing plans.

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

(3) Completed construction of the continuing care retirement community or applicable phase.

(4) Obtained the required licenses.

(5) Paid the remainder of the application fees.

(6) Executed a permanent mortgage loan or other long-term financing.

(7) Met all applicable provisions of this chapter.

(b) The provisional certificate of authority shall expire 12 months after issuance unless the following occur:

(1) Sixty days prior to the expiration of the provisional certificate of authority, the provider petitions the department in writing for an extension of the provisional certificate of authority.

(2) Upon a showing of good cause by the provider, the department determines that the applicant is capable of meeting the requirements of Section 1786.2 during the period of extension.

(c) The length of the period of extension shall be determined at the department's discretion.

(d) After the provisional certificate of authority is issued providers may continue to take deposits by modifying the deposit subscription agreement. The new deposit agreement shall clearly state the rights of the depositor and the provider. These agreements shall be submitted to the department for review and approval prior to use.

(e) All holders of a provisional certificate of authority shall request in writing a final certificate of authority when the requirements of Section 1786.2 have been met.

SEC. 34. Section 1786.2 of the Health and Safety Code is amended to read:

1786.2. (a) A certificate of authority shall not be issued to a provider, unless the department determines that all of the following have occurred:

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

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

(A) At a minimum, continuing care contracts have been executed for 80 percent of the total residential living units in the continuing care retirement community, with payment in full of the entrance fee.

(B) At a minimum, continuing care contracts have been executed for 70 percent of the total residential living units in the continuing care retirement community, with payment in full of the entrance fee, and the provider has submitted a financial and marketing plan, satisfactory to the department, demonstrating that the proposed continuing care retirement community will be financially viable.

(C) At a minimum, continuing care contracts have been executed for 50 percent of the total residential living units in the continuing care retirement community, with payment in full of the entrance fee, and the provider furnishes and maintains a letter of credit or other security, satisfactory to the department, sufficient to bring the total amount of payments to a level equivalent to 80 percent of the total entrance fees for the entire continuing care retirement community.

(3) A minimum five-year financial plan of operation remains satisfactory to the department.

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

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

(b) When issued, the certificate of authority, whether full or conditioned, shall remain in full force unless inactivated, suspended, or revoked by the department pursuant to Section 1793.21.

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

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

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

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

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

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

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

(f) All text in continuing care contract forms shall be printed in at least 10-point typeface.

(g) A clearly legible copy of the continuing care contract, executed by the provider and a transferor, shall be furnished, with all required or included attachments to the transferor at the time the continuing care contract is executed and shall be furnished within 10 calendar days to the resident if the resident is other than the transferor.

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

(i) The continuing care contract shall constitute an admissions agreement for purposes of the residential care facility for the elderly and long-term health care facility requirements. The continuing care contract may state the entitlement for skilled nursing care in accordance with the provisions of law governing admissions to long-term health care facilities in effect at the time of admission to the skilled nursing facility. The parties may agree to the terms of nursing facility admission at the time the continuing care contract is executed, or the provider may present an exemplar of the then-current nursing facility admission agreement and require the resident to execute the form of agreement in effect at the time of admission to the nursing facility. These terms shall include the nursing fee, or the method of determining the fee, at the time of the execution of the continuing care

agreement, the services included in and excluded from the fee, the grounds for transfers and discharges, and any other terms required to be included under federal law.

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

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

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

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

(2) The name and address of the continuing care retirement community.

(3) The resident's name and number of the unit to be occupied.

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

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

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

(7) The duration of the continuing care contract.

(8) A list of the following services that are to be made available to the resident, which shall include at a minimum, the following conditions for residential care facility for the elderly licensure:

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

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

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

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

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

(F) Personal care.

(G) Assistance with taking medications.

(H) Central storing and distribution of medications.

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

(9) An itemization of the services that are included in the monthly fee and the services that are available at an extra charge. The provider shall attach a current fee schedule to the continuing care contract.

(10) The procedures and conditions under which residents may be voluntarily or involuntarily transferred from their designated living units. The transfer procedures, at a minimum, shall provide for all of the following:

(A) When, in the opinion of the continuing care retirement community management, a physician and surgeon, appropriate specialist, or licensing official, any of the following conditions ~~exist~~ *exists*:

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

(ii) Resident develops a physical or mental condition that endangers the health, safety, or well-being of the resident or another person, or causes an unreasonable and ongoing disturbance at the continuing care retirement community.

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

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

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

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

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

(12) Any continuing obligations of the provider in the event a resident is transferred.

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

(14) The obligations of the provider for continued services to the resident while the resident is absent from the continuing care retirement community.

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

(16) If real or personal properties are transferred in lieu of cash, a statement as to their value at the time of transfer, and how the value was ascertained shall be included.

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

(B) With respect to the transfer of real property, a statement that the deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to a "continuing care contract" and may

be subject to rescission by the transferor within 90 days from the date of the transfer.

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

(17) The amount of the entrance fee.

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

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) A conspicuous statement, in at least 10-point boldface type in immediate proximity to the space reserved for the signature of the transferor, that provides

as follows: ‘‘You, the transferor, may cancel the transaction without cause at any time within 90 days from the date of this transaction. See the attached notice of cancellation form for an explanation of this right.’’

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

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

(30) A statement that involuntary termination of the continuing care contract by the provider after the cancellation period shall be only for good and sufficient cause.

(A) Any continuing care contract containing a clause that provides for a resident to be evicted, or provides for a continuing care contract to be canceled for ‘‘just cause,’’ ‘‘good cause,’’ or other similar provision, shall also include a provision that none of the following activities by the resident, or on behalf of the resident, constitutes ‘‘just cause,’’ ‘‘good cause,’’ or otherwise activates the eviction or cancellation provision:

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

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

(B) No provider shall discriminate or retaliate in any manner against any resident of a continuing care retirement community for contacting the department, or any other state, county, or city agency, or any elected or appointed government official to file a complaint or for any other reason, or for participation in a residents’ coalition.

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

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

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

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

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

"NOTICE" (date)

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 needed.

(b) A life care contract shall also include all of the following:

(1) Provision to provide all levels of care, including acute care and physicians and surgeons' services to a resident.

(2) Provision to provide this care for the duration of the resident's life except for termination of the life care contract by the provider during the cancellation period or after the cancellation period for good cause.

(3) Provision to provide a comprehensive continuum of care, including skilled nursing, under the ownership and supervision of the provider on, or adjacent to, the continuing care retirement community premises.

(4) Provision that no change will be made in the monthly care fees based on the resident's level of care or service.

(5) Provision to subsidize residents who become financially unable to pay their monthly care fees provided that the resident's financial need did not arise from the action to divest themselves of their assets.

(c) The continuing care contract may include, but is not limited to, and need not include, any of the following items:

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

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

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

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

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

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

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

(2) Provisions which limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In such cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed in the continuing care contract or in the medical report, which may be attached to and made a part of the continuing care contract.

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

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

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

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

(7) Provision that the resident agrees to observe off-limit areas of the continuing care retirement community as designated by the provider for safety reasons. However, the provider shall not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect.

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

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

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

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

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

(13) Other provisions approved by the department.

(d) A copy of the current audited financial statement of the provider shall be attached to every continuing care contract. For a provider whose current audited financial statement does not accurately reflect the financial ability of the provider to fulfill the continuing care contract promises, this requirement shall include supplemental statements or attachments that disclose all of the following:

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

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

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

(e) A schedule of the average monthly fees for each type of residential living unit charged to residents for each of the five years preceding execution of the continuing care contract shall be attached to every continuing care contract. This schedule shall be updated annually at the end of each fiscal year. If the continuing care retirement community has not been in existence for five years, the information shall be provided for each of

the years the continuing care retirement community has been in existence.

(f) If any continuing care contract provides for a health insurance policy for the benefit of the resident, a binder under Sections 382 and 382.5 of the Insurance Code shall be attached to the continuing care contract.

(g) A completed form in duplicate, captioned ''Notice of Cancellation'' shall be attached to every continuing care contract. Such notice shall be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:

''NOTICE OF CANCELLATION'' (date)

~~/Enter date of transaction/~~
(Enter date of transaction)

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

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

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

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

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

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

~~to _____~~

~~/Name of Provider/~~

~~at _____~~

~~/Address of provider's place of business/~~

~~not later than midnight of _____ (date).~~

~~I hereby cancel this transaction _____~~

~~(Transferor's signature)~~

to _____

(Name of Provider)

at _____

(Address of provider's place of business)

not later than midnight of _____ *(date).*

I hereby cancel this transaction _____

(Transferor's signature)

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

1788.2. (a) The continuing care contract may be canceled without cause by written notice from either party, within 90 days from the date of the transaction.

(b) For both equity and nonequity projects, death of the resident during the cancellation period shall constitute a cancellation of the continuing care contract under subdivision (a), unless a continuing care contract includes specific provisions otherwise.

(c) The cancellation period and the refund of obligations associated therewith shall apply as follows:

(1) To all continuing care contracts executed in conjunction with nonequity continuing care retirement communities.

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

(d) The following fees may be charged during the 90-day cancellation period:

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

(2) Equity project providers may impose a transfer fee on sellers. For contracts entered into after January 1, 1996, those transfer fees are subject to the following limitations:

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

(B) Upon the cancellation of a continuing care contract that is not executed in conjunction with the purchase of an equity interest from the provider, the transfer fee shall be no greater than the sum of 10 percent of either the original or resale price of the equity interest and 100 percent of the excess, if any, of the gross resale price of the equity interest over the purchase price paid by the transfer for the interest.

(e) Upon the termination of a continuing care contract that occurs more than 90 days after the purchase of the equity interest from the provider, the transfer fee shall be no greater than the sum of 10 percent of either the original or resale price of the equity interest and 100 percent of the excess if any, of the gross resale price of the equity interest over the purchase price paid by the transferor for the interest.

(f) For purposes of this section, ‘‘gross resale price’’ means the resale price before any deductions for transfer

fees, transfer taxes, real estate commissions, periodic fees, late charges, interest, escrow fees, or any other fees incidental to the sale of real property.

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

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

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

1788.4. (a) Except during the cancellation period any refunds due pursuant to the continuing care contract shall be paid within 14 calendar days after a resident makes possession of the living unit available to the provider, or within 90 calendar days after cancellation, death, or receipt of notice of termination, whichever is later.

(b) In nonequity projects, if the provider terminates the continuing care contract, the transferor shall be refunded the difference between the total amount of entrance, monthly, and optional fees paid and the amount used for care of the resident.

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

SEC. 40. Section 1789 of the Health and Safety Code is amended to read:

1789. (a) Proposed changes of entity name, structure, organization, operation, overall management of the continuing care retirement community, or financing shall be submitted to the department for review and approval.

(b) The provider shall give written notice of proposed changes to the department no less than 60 calendar days prior to making changes.

(c) This notice requirement does not apply to routine facility staff changes.

SEC. 40.5. Section 1789.2 of the Health and Safety Code is amended to read:

1789.2. (a) Any provider contemplating capital financing that would entail a mortgage or deed of trust for any property on which a resident resides pursuant to a continuing care contract shall provide the department with written notification at least 90 calendar days prior to the execution of the proposed transaction which includes all of the following:

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

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

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

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

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

(c) If the department determines that the proposed capital financial transaction will materially increase monthly fees or impair the provider's ability to maintain required reserves, the department may refuse to approve the transaction, may record a notice of lien on the provider's property pursuant to Section 1793.15, after notifying the provider and giving the provider an opportunity to withdraw the planned transaction, or take any other action that it determines to be in the best interest of the residents.

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

1789.4. (a) Any provider who proposes to sell or transfer ownership of a continuing care retirement community to another party shall obtain approval from

the department before consummating the sale or transfer.

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

(1) Identification of the proposed purchaser.

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

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

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

(1) A description of the parties.

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

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

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

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

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

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

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

1789.6. All providers shall record and maintain a ‘‘Notice of Statutory Limitation on Transfer’’ as required by paragraph (24) of subdivision (a) of Section 1779.4.

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

1789.8. Each provider shall obtain and maintain in effect insurance or a fidelity bond for any agent or employee, who, in the course of his or her agency or employment, has access to any substantial amount of funds. This requirement is separate from the bonding requirements of Residential Care Facility for the Elderly regulations.

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

1790. (a) Each provider, that has obtained a provisional or final certificate of authority, and each provider that possesses an inactive certificate of authority, shall submit an annual report of its financial condition. The report shall consist of audited financial statements and required reserve calculations, with accompanying certified public accountants' opinions thereon, Continuing Care Provider Fee and Calculation Sheet, resident listings, evidence of fidelity bond as required by Section 1789.8, and certification that the continuing care contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information:

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

(2) Full details on the status of reserves and on per capita costs of operation for each continuing care retirement community operated.

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

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

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

(b) Each provider shall file the annual report with the department within four months after the provider's fiscal year end. If the complete annual report is not received by

the due date, a one thousand dollar ($1,000) late fee shall accompany submission of the reports. If the reports are more than 30 days past due, an additional fee of thirty-three dollars ($33) for each day over the first 30 days shall accompany submission of the report. The department may, at its discretion, waive the late fee for good cause.

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

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

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

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

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

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

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

(g) If the department determines a provider's annual audited report needs further analysis and investigation, as a result of incomplete and inaccurate financial statements, significant financial deficiencies, development of work out plans to stabilize financial solvency, or for any other reason, the provider shall reimburse the department for reasonable actual costs incurred by the department or its representative. The reimbursed funds shall be deposited in the Continuing Care Contract Provider Fee Fund.

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

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

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

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

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

1792. (a) Any provider furnishing care pursuant to a prepaid continuing care contract executed after January 1, 1979, shall establish a reserve fund escrow account with an escrow agent, in an amount which equals the aggregate principal and interest, rental, or lease payments due during the next 12 months on account of

any first mortgage or other long-term financing of the continuing care retirement community or any leases or other rental agreement for a continuing care retirement community.

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

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

(d) Submit a copy of the executed escrow agreement that provides all of the following:

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

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

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

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

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

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

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

(1) The following life expectancy table shall be used in connection with all continuing care contracts:

Age	Females	Males	Age	Females	Males
55	26.323	23.635	83	7.952	6.269
56	25.526	22.863	84	7.438	5.854
57	24.740	22.101	85	6.956	5.475

58	23.964	21.350	86	6.494	5.124
59	23.199	20.609	87	6.054	4.806
60	22.446	19.880	88	5.613	4.513
61	21.703	19.163	89	5.200	4.236
62	20.972	18.457	90	4.838	3.957
63	20.253	17.764	91	4.501	3.670
64	19.545	17.083	92	4.175	3.388
65	18.849	16.414	93	3.862	3.129
66	18.165	15.759	94	3.579	2.903
67	17.493	15.116	95	3.329	2.705
68	16.832	14.486	96	3.109	2.533
69	16.182	13.869	97	2.914	2.384
70	15.553	13.268	98	2.741	2.254
71	14.965	12.676	99	2.584	2.137
72	14.367	12.073	100	2.433	2.026
73	13.761	11.445	101	2.289	1.919
74	13.189	10.830	102	2.152	1.818
75	12.607	10.243	103	2.022	1.723
76	12.011	9.673	104	1.899	1.637
77	11.394	9.139	105	1.784	1.563
78	10.779	8.641	106	1.679	1.510
79	10.184	8.159	107	1.588	1.500
80	9.620	7.672	108	1.522	1.500
81	9.060	7.188	109	1.500	1.500
82	8.501	6.719	110	1.500	1.500

The life expectancy table set forth in this paragraph shall be used until this section is amended.

(2) For residents over 110 years of age use 1.500 for computing the statutory reserve requirements.

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

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

(c) The reserves shall be calculated by progressing through each of the following steps:

(1) Compute net cash per capita costs:

(A) Cash operating expenses: Deduct: depreciation and other noncash expenses; processing fees; community services; expenses that will not be incurred in future years; reimbursements for services to nonresidents; donated services, if included as an operating expense on the income statement; investment income; contributions received; and other items that the continuing care retirement community reasonably believes should be deducted with accompanying explanation.

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

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

(C) Total mean number of residents: Add the total number of residents at the beginning of the fiscal year to the total number of residents at the end of the fiscal year and divide by two. For continuing care retirement communities wherein resident population fluctuates significantly from month to month and for continuing care retirement communities in their first year of operation, the mean number of residents by level of care or the total mean number may be computed by adding the number of residents at the end of each month in the fiscal year and dividing by the total number of months included. The daily attendance for the fiscal year may also be used to determine the mean number of residents.

(D) Net cash per capita cost: Cash operating expenses divided by the mean number of residents. It is acceptable, but not required, to compute net cash per capita for various levels of care, based on allocated expenses and contributions from consolidated financial statements. Allocation methods shall be subject to the approval of the department, and schedules shall be

prepared for all levels of care, including any levels not covered by continuing care contracts. For a continuing care retirement community in its first year of operation or following a major addition to an existing continuing care retirement community, net cash per capita cost for calculating reserve requirements may be the sum of the figures determined by dividing fixed cash operating expenses by the number of residents at the end of the fiscal year, and dividing variable cash operating expenses by the mean number of residents.

(2) Compute projected life cost:

(A) Compute aggregate life expectancies: For each resident, compare age against the life expectancy table and total all life expectancies.

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

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

(4) Compute projected life revenue:

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

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

(C) Aggregate life expectancies: For each resident, compare age against the life expectancy table and total all life expectancies for each annual fee.

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

(5) Compute statutory reserve:

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

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

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

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

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

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

(2) Notes receivable by the continuing care retirement community, that are secured by first deeds of trust and first mortgages on property not owned by the provider or its affiliates.

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

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

(B) Common stocks rated ''above average'' or higher by any national rating agency. For example, a rating of

A+, A, or A- by Standard and Poor's Corporation is required for common stock.

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

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

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

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

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

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

(A) The value of this real estate shall be based on 70 percent of the net equity thereof, which shall be the book value, assessed value, or current appraised value within 12 months prior to the end of the fiscal year, less all encumbrances, depreciation, and the amount required for reserves for refundable contracts under Section 1793, all according to audited financial statements acceptable to the department.

(B) All appraisals shall be prepared by either a member of the American Institute of Appraisers or a

member of the Society of Real Estate Appraisers, or the county assessor. The department may require technical reports to be verified or certified, or both. The expense of any technical reports or any verifications thereof shall be borne by the provider.

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

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

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

(B) Qualified for sale in California.

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

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

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

(8) Liquid assets, if any, shall consist of the following:

(A) Listed bonds, stocks, and commercial and savings accounts.

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

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

(10) Deposits that represent funds turned over to the continuing care retirement community by residents for safekeeping without relinquishing control thereof shall be offset against liquid assets, if any, otherwise against other assets.

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

1793. (a) Any provider offering a refundable contract, or other entity assuming responsibility for refundable contracts, shall maintain a refund reserve fund in trust for the residents. This trust fund shall remain intact to accumulate interest earnings resulting from investments of liquid reserves in accordance with paragraph (1) of subdivision (e) and subparagraphs (A) through (E), inclusive, of paragraph (3) of subdivision (e) of Section 1792.2. The amount of the refund reserve shall be revised annually by the provider and submitted to the department in conjunction with the annual report required by Section 1790.

(b) Any providers or other entity assuming responsibility for refundable contracts, which has not executed refundable contracts in a continuing care retirement community prior to January 1, 1996, and proposes to execute these contracts in that continuing care retirement community after that date, shall maintain a refund reserve fund in trust for the residents holding such contracts.

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

(2) To the extent approved by the department, the trust account may invest up to 70 percent of the refund reserves in real estate that is used to provide care and housing for the holders of the refundable continuing care contracts and is located on the same campus where these continuing care contract holders reside.

These investments in real estate shall be limited to 50 percent of the providers' net equity in the real estate. The

net equity shall be the book value, assessed value, or current appraised value within 12 months prior to the end of the fiscal year, less any depreciation, encumbrances, and the amount required for statutory reserves under Section 1792.2, all according to audited financial statements acceptable to the department. *This paragraph shall apply to applications submitted after May 31, 1995.*

(3) *Any provider who submitted an application on or before May 31, 1995, may provide for the refund obligation of this section with a trust account that invests up to 85 percent of the refund reserves in the continuing care retirement community's real estate and the remaining 15 percent in the form of either cash or an unconditional, irrevocable letter of credit to be phased in over a two-year period beginning with initial occupancy in the facility.*

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

~~(4)~~

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

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

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

(C) For that resident, determine from compound interest tables the factor which represents the amount required today to grow at compound interest to one dollar ($1) at the end of the period of the life expectancy of the resident.

(D) Multiply the refundable portion of the resident's entry fee amount by the factor obtained in subparagraph

(C) to determine the amount of reserve required to be maintained.

(E) The sum of these amounts with respect to each resident shall constitute the reserve for refundable contracts.

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

~~(5)~~

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

~~(6)~~

(7) Deposits shall be made to the trust fund with respect to new residents when the entry fee is received and in the amount determined with respect to that resident in accordance with paragraph ~~(4)~~ *(5)* of subdivision (b).

~~(7)~~

(8) Additional deposits shall be made to the trust fund within 30 days of any annual reporting date on which the trust fund balance falls below the required reserve in accordance with paragraph ~~(4)~~ *(5)* of subdivision (b) and such deposits shall be in an amount sufficient to bring the trust fund balance into compliance with this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Multiply the inflated mean entrance fee for the 40th year, and each preceding year, as specified in

paragraph (9), by the annual turnover, as specified in paragraph (6), until the total of the annual turnovers used in the calculations equals the total number of units in the continuing care retirement community.

(11) The projected refund liability shall be the sum of the products obtained pursuant to paragraph (10), multiplied by the rate of refund for the seventh year of residency, specified by current continuing care contracts, multiplied by the percentage of current continuing care contracts which specify this rate of refund. The projected refund liability amount shall be calculated for each rate, if existing continuing care contracts specify several rates.

(12) The projected refund liability, or the aggregate of these liabilities, if several rates are obtained pursuant to paragraph (11), may be reduced by the value of the land used for the continuing care retirement community, inflated to the 40th year of operation, as determined pursuant to paragraph (4), if the provider agrees to a lien pursuant to Section 1793.15 to secure this commitment.

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

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

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

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

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

(C) The ‘‘total net worth,’’ or equivalent amount, as reflected on the most recent Form 109 filed with the Franchise Tax Board.

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

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

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

(f) All continuing care retirement communities offering refundable entrance fees that are not secured by cash reserves, except those facilities that were issued a certificate of authority prior to May 31, 1995, shall clearly disclose this fact in all marketing materials and continuing care contracts.

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

1793.5. (a) Any entity that sells deposit subscriptions proposing to promise to provide care without having a current and valid permit to sell deposit subscriptions is guilty of a misdemeanor.

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

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

(d) Any entity that abandons the continuing care retirement community or the entity’s obligations under a continuing care contract, pursuant to subdivision (f), is guilty of a misdemeanor. Any entity in violation of this section shall be liable to the injured resident for treble the

amount of damages assessed in any civil action brought by or on behalf of the resident in any court having proper jurisdiction. The court may, in its discretion, award all costs and attorney fees to the injured resident, if that resident prevails in the action.

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

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

(g) Any violation of subdivision (f) shall constitute cause for the suspension of all and any licenses, permits, provisional certificates of authority, and certificates of authority issued to such entity by any agency of the state.

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

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

1793.6. (a) The department may issue citations pursuant to this section containing orders of abatement and assessing civil penalties against any entity who violates Section 1771.2 or 1793.5.

(b) If upon inspection or investigation, the department has probable cause to believe that an entity is violating Section 1771.2 or 1793.5, the department may issue a citation to that entity. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement. In addition to the administrative fines pursuant to Section 1793.27, a provider in violation of the abatement order shall be liable for an assessment of a civil penalty in the amount of two hundred dollars ($200) per day for violation of the abatement order.

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

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

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

(f) If the entity cited fails without good cause to appeal to the department in writing within 15 business days after service of the citation, the citation shall become a final order of the department. The department may extend the 15-day period for good cause, to a maximum of 15 additional days.

(g) If the entity cited under this section makes a timely appeal of the citation, the department shall provide an opportunity for a hearing. The department shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.

(h) After exhaustion of the review procedures specified in this section, the department may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited entity to comply with the order of abatement. The application, which shall include a certified copy of the final order of the department shall be served upon the

cited entity who shall have five business days within which to file that entity's response in writing in the superior court, this period may be extended for good cause. Failure on the part of the cited entity to so respond shall constitute grounds for entry of a default judgment against that entity. In the event a response is timely filed in superior court, the action shall have priority for trial over all other civil matters.

(i) Notwithstanding any other provision of law, the department may waive part or all of the civil penalty if the entity against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a certificate of authority.

(j) Civil penalties recovered pursuant to this section shall be deposited into the Continuing Care Provider Fee Fund.

SEC. 51. Section 1793.7 of the Health and Safety Code is amended to read:

1793.7. A permit to sell deposit subscriptions, a provisional certificate of authority, or a certificate of authority shall be forfeited by operation of law when any one of the following occurs:

(a) The applicant has notified the department that marketing of the proposed continuing care retirement community has been terminated.

(b) The applicant or provider surrenders the permit to sell deposit subscriptions, provisional certificate of authority, or certificate of authority to the department.

(c) The applicant or provider sells or otherwise transfers all or part of the continuing care retirement community.

(d) The applicant or provider transfers stock where the transfer results in a majority change in ownership of the continuing care retirement community or the certificate of authority holder.

(e) The applicant or provider moves the continuing care retirement community from one location to another without the department's prior approval.

(f) The applicant or provider abandons the continuing care retirement community or its obligations under the continuing care contracts.

(g) The applicant or provider is evicted from the continuing care retirement community premises.

SEC. 52. Section 1793.8 is added to the Health and Safety Code, to read:

1793.8. A Certificate of Authority shall be automatically inactivated when a provider voluntarily ceases to enter into continuing care contracts with new residents. The provider shall continue to comply with all provisions of this chapter until all continuing care contractual obligations have been fulfilled.

SEC. 53. Section 1793.9 of the Health and Safety Code is amended to read:

1793.9. (a) Obligations pursuant to continuing care contracts executed by a provider shall be deemed a preferred claim against all assets owned by the provider in the event of liquidation. However, this preferred claim shall be subject to any perfected claims secured by mortgage, deed of trust, pledge, deposit as security, escrow, or otherwise secured.

(b) In the event of liquidation by the provider, residents who have executed a refundable continuing care contract shall be deemed to have a preferred claim to liquid assets held in the refund reserve fund pursuant to Section 1793. This preferred claim shall be superior to all other claims from residents without refundable contracts, or any other creditor. If this fund and any other available assets are not sufficient to fulfill the refund obligations, the refund reserve funds shall be distributed to each resident in a proportionate amount, determined by dividing the amount of each resident's refund due by the total refunds due and multiplying that percentage by the total funds available.

(c) For purposes of computing the reserve required pursuant to Sections 1792.2 and 1793, the liens required under Section 1793.15 shall not be deducted from the value of real or personal property.

SEC. 54. Section 1793.11 of the Health and Safety Code is amended to read:

1793.11. (a) Any transfer of money or property, pursuant to a continuing care contract found by the department to be executed in violation of this chapter, is voidable at the option of the transferor for a period of 90 days from the execution of the transfer.

(b) No action may be brought for the reasonable value of any services rendered between the date of transfer and the date the transferor disaffirms the continuing care contract.

(c) With respect to real property, the right of disaffirmance or rescission is conclusively presumed to have terminated if a notice of intent to rescind is not recorded with the county recorder of the county in which the real property is located within 90 days from the date of execution of the conveyance by the transferor.

(d) Any deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to rescission by the transferor within 90 days from the date of the transfer.

(e) Any transfer of a sum of money or property, real or personal, to anyone pursuant to a continuing care contract that was not approved by the department is voidable at the option of the department or transferor or his or her assigns or agents.

(f) Any transaction determined by the department to be in violation of this chapter is voidable at the option of the transferor or his or her assigns or agents.

SEC. 55. Section 1793.13 of the Health and Safety Code is amended to read:

1793.13. (a) In either of the following situations the department may require the provider to submit within 60 days a financial plan detailing the method by which the provider proposes to overcome the deficiencies noted by the department.

(1) If a provider fails to file an annual report as required by Section 1790.

(2) At any other time when the department has reason to believe that the provider is insolvent, is in imminent

danger of becoming insolvent, is in a financially unsound or unsafe condition, or that its condition is such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts.

(b) The department shall approve or disapprove the plan within 30 days of its receipt.

(c) If the plan is approved, the provider shall immediately implement the plan.

(d) If the plan is disapproved, or if it is determined that the plan is not being fully implemented, the department may, after consultation with and upon consideration of the recommendations of the Continuing Care Contracts Committee, require the provider to obtain new or additional management capability to solve its difficulties. A reasonable period, as determined by the department, shall be allowed to the reorganized management to develop a plan which, subject to the approval of the department and after review by the committee, will reasonably assure that the provider will meet its responsibilities under the law.

SEC. 56. Section 1793.15 of the Health and Safety Code is amended to read:

1793.15. (a) When necessary to secure the performance of all obligations of the applicant or provider to transferors, the department may record a notice or notices of lien on behalf of the transferors. From the date of recording, the lien shall attach to all real property owned or acquired by the provider during the pendency of the lien, provided such property is not exempt from the execution of a lien and is located within the county in which the lien is recorded. The lien shall have the force, effect, and priority of a judgment lien.

(b) The department shall file a release of the lien if the department deems the lien no longer necessary to secure the performance of all obligations of the applicant or provider to the transferors.

(c) The applicant or provider may appeal to the department from a refusal of a request for a release of the lien.

(d) The decision shall be subject to court review pursuant to Section 1094.5 of the Code of Civil Procedure, upon petition of the applicant or provider filed within 30 days of service of the decision.

SEC. 57. Section 1793.17 of the Health and Safety Code is amended to read:

1793.17. (a) When necessary to secure the interests of transferors, the department may require that the applicant or provider reestablish an escrow account, return previously released moneys to escrow, and escrow all future entrance fee payments.

(b) The department may release funds from escrow when it deems the escrow is no longer necessary to secure the performance of all obligations of the applicant or provider to the transferors.

SEC. 58. Section 1793.19 of the Health and Safety Code is amended to read:

1793.19. The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive and may be sought and employed in any combination deemed advisable by the department to enforce this chapter.

SEC. 59. Section 1793.21 of the Health and Safety Code is amended to read:

1793.21. The department, in its discretion, may condition, suspend, or revoke any permit to sell deposit subscriptions, provisional certificate of authority, or certificate of authority issued under this chapter if it finds any one or more of the following:

(a) Violation by the provider of this chapter or the rules and regulations adopted under this chapter.

(b) Aiding, abetting, or permitting the violation of this chapter or the rules and regulations adopted under this chapter.

(c) Suspension or revocation of the license of the provider pursuant to the licensing provisions of Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(d) Material misstatement, misrepresentation, or fraud in obtaining the permit to sell deposit subscriptions,

provisional certificate of authority, or ~~certificates~~ *certificate* of authority.

(e) Demonstrated lack of fitness or trustworthiness.

(f) Fraudulent or dishonest practices of management in the conduct of business.

(g) Misappropriation, conversion, or withholding of moneys.

(h) Refusal by the provider to be examined or to produce its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligations as to such examination, when required by the department.

(i) The provider's unsound financial condition or use of such methods and practices in the conduct of business as to render further transactions by the provider hazardous or injurious to the public.

(j) Failure to maintain at all times at least the minimum statutory reserves required by Section 1792.2.

(k) Failure to maintain the reserve fund escrow account for prepaid continuing care contracts required by Section 1792.

(*l*) Failure to comply with the refund reserve requirements of Section 1793.

(m) Failure by the provider to maintain escrow accounts for funds as required by this chapter.

(n) Failure to file an annual report as required by Section 1790.

(o) Violation of a condition on a certificate.

(p) Failure to comply with its approved financial and marketing plan, or secure approval of a modified plan.

(q) A material change or deviation from the approved plan of operation without the prior consent of the department.

(r) Failure by the provider to fulfill its obligations under continuing care contracts.

(s) Material misrepresentations to prospective residents, or residents of, a continuing care retirement community.

(t) Failure by the provider to submit proposed changes to continuing care contracts prior to use, or execution of a continuing care contract that has not been previously approved by the department.

(u) Failure by the provider to diligently submit materials required by the statute.

SEC. 60. Section 1793.23 of the Health and Safety Code is amended to read:

1793.23. (a) The department shall consult with and consider the recommendations of the Continuing Care Contracts Committee prior to conditioning, suspending, or revoking any permit to sell deposit subscriptions, provisional certificate of authority, or certificate of authority.

(b) The provider shall have a right of appeal to the department. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all of the powers granted therein. A suspension, condition, or revocation shall remain in effect until completion of the proceedings in favor of the provider. In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by a preponderance of the evidence.

(c) The department may, upon finding of changed circumstances, remove a suspension or condition.

SEC. 61. Section 1793.25 of the Health and Safety Code is amended to read:

1793.25. (a) During the period that the revocation or suspension action is pending against the permit to sell deposit subscriptions, provisional certificate of authority, or certificate of authority, the provider shall not enter into any new continuing care contracts or deposit subscription agreements.

(b) The suspension or revocation by the department, or voluntary return of the provisional certificate of authority or certificate of authority by the provider, shall not release the provider from obligations assumed at the time the continuing care contracts were executed.

SEC. 62. Section 1793.27 of the Health and Safety Code is amended to read:

1793.27. (a) If the department finds that one or more grounds exist for the discretionary condition, revocation, or suspension of a permit to sell deposit subscriptions, provisional certificate of authority, or a certificate of authority issued under this chapter, the department, in lieu of the condition, revocation, or suspension, may impose a administrative fine upon the provider in an amount not to exceed one thousand dollars ($1,000) per violation.

(b) The administrative fine shall be deposited in the Continuing Care Provider Fee Fund and shall be disbursed for the specific purposes of offsetting the costs of investigation and litigation and to compensate court-appointed administrators when continuing care retirement community assets are insufficient.

SEC. 63. Section 1793.29 of the Health and Safety Code is amended to read:

1793.29. In the case of any violation or threatened violation of this chapter, the department may institute a proceeding or may request the Attorney General to institute a proceeding to obtain injunctive or other equitable relief in the superior court in and for the county in which the violation occurs, or in which the principal place of business of the provider is located. The proceeding under this section shall conform with the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required of the department in any action commenced under this section, nor shall the department be required to allege facts necessary to show lack of adequate remedy at law, or to show irreparable loss or damage.

SEC. 64. Section 1793.31 of the Health and Safety Code is amended to read:

1793.31. (a) The district attorney of every county may, upon application by the department or its authorized representative, institute and conduct the

prosecution of any action for violation of this chapter within his or her county.

(b) This chapter shall not limit or qualify the powers of the district attorney to institute and conduct the prosecution of any action brought for the violation within his or her county of this chapter or any other provision of law, including, but not limited to, actions for fraud or misrepresentation.

(c) The department shall provide access to any records in its control on request of a district attorney and shall cooperate in any investigation by a district attorney.

SEC. 65. Section 1793.50 of the Health and Safety Code is amended to read:

1793.50. (a) The department, after consultation with the Continuing Care Contracts Committee, may petition the superior court for an order appointing a qualified administrator to operate a continuing care retirement community, and thereby mitigate crisis situations wherein elderly residents are left without means for their support or moved without proper preparation, in any of the following circumstances:

(1) The provider is insolvent or in imminent danger of becoming insolvent.

(2) The provider is in a financially unsound or unsafe condition.

(3) The provider has failed to establish or has substantially depleted the reserves required by this chapter.

(4) A plan, as specified in Section 1793.13, has not been approved by the department or the provider has failed to implement the plan approved by the department.

(5) The provider is unable to fully perform its obligations pursuant to continuing care contracts.

(6) The residents are otherwise placed in serious jeopardy.

(b) The administrator may only assume the operation of the continuing care retirement community in order to either rehabilitate the provider to enable it fully to perform its continuing care contract obligations, implement a plan of reorganization acceptable to the

department, facilitate the transition if another provider assumes continuing care contract obligations, or facilitate an orderly liquidation of the provider.

(c) With each petition, the department shall include a request for a temporary restraining order to prevent the provider from disposing of or transferring assets pending the hearing on the petition.

(d) The provider shall be served with a copy of the petition, together with an order to appear and show cause why management and possession of the provider's continuing care retirement community or assets should not be vested in an administrator.

(e) The order to show cause shall specify a hearing date, which shall be not less than five nor more than 10 days following service of the petition and order to show cause on the provider.

(f) Petitions to appoint an administrator shall have precedence over all matters, except criminal matters, in the court.

(g) At the time of the hearing, the department shall advise the provider and the court of the name of the proposed administrator.

(h) If, at the conclusion of the hearing, including such oral evidence as the court shall consider, the court finds that any of the circumstances specified in subdivision (a) exist, the court shall issue an order appointing an administrator to take possession of the property of the provider and to conduct the business thereof, enjoining the provider from interfering with the administrator in the conduct of the rehabilitation, and directing the administrator to take steps toward removal of the causes and conditions which have made rehabilitation necessary, as the court may direct.

(i) The order shall include a provision directing the issuance of a notice of the rehabilitation proceedings to the residents at the continuing care retirement community and to other interested persons as the court shall direct.

(j) The court may permit the provider to participate in the continued operation of the continuing care

retirement community during the pendency of any appointments ordered pursuant to this section and shall specify in the order the nature and scope of the participation.

(k) The court shall retain jurisdiction throughout the rehabilitation proceeding and may issue further orders as it deems necessary to accomplish the rehabilitation or orderly liquidation of the continuing care retirement community in order to protect the residents of the continuing care retirement community.

SEC. 66. Section 1793.52 of the Health and Safety Code is amended to read:

1793.52. The court-appointed administrator shall immediately notify the residents of that appointment and of the status of the continuing care retirement community management.

SEC. 67. Section 1793.54 of the Health and Safety Code is amended to read:

1793.54. If an administrator is appointed to rehabilitate a provider, the administrator may do any of the following:

(a) Take possession of and preserve, protect and recover any assets, books, records, or property of the provider, including, but not limited to, claims or causes of action belonging to, or which may be asserted by, the provider.

(b) Deal with the property in the administrator's name in the capacity as administrator, and purchase at any sale any real estate or other asset upon which the provider may hold any lien or encumbrance or in which the provider may have an interest.

(c) File, prosecute, and defend or compromise any suit or suits which have been filed, or which may thereafter be filed, by or against the provider as necessary to protect the provider or the residents or any property affected thereby.

(d) Deposit and invest any of the provider's available funds.

(e) Pay all expenses of the rehabilitation.

(f) Perform all duties of the provider in the provision of care and services to residents in the continuing care retirement community at the time the administrator takes possession.

(g) Facilitate the orderly transfer of residents should the provider ultimately fail.

(h) Exercise any other powers and duties as may be authorized by law or provided by order of the court.

SEC. 68. Section 1793.56 of the Health and Safety Code is amended to read:

1793.56. (a) Reasonable compensation shall be paid to the administrator appointed.

(b) Costs for the compensation shall be levied against the assets of the provider. When facility assets are insufficient, the department, in its discretion, may compensate the administrator from funds available from the Continuing Care Provider Fee Fund.

(c) Any individual appointed administrator, pursuant to Section 1793.50, shall be held harmless for any negligence in the performance of his or her duties and shall be indemnified by the provider for costs of defending actions brought against him or her in his or her capacity as administrator.

SEC. 69. Section 1793.58 of the Health and Safety Code is amended to read:

1793.58. (a) The department, administrator, or any interested person, upon due notice to the administrator, at any time, may apply to the court for an order terminating the rehabilitation proceedings and permitting the provider to resume possession of the provider's property and the conduct of the provider's business.

(b) No order shall be granted pursuant to subdivision (a) except when, after a full hearing, the court has determined that the purposes of the proceeding have been fully and successfully accomplished and that the continuing care retirement community can be returned to the provider's management without further jeopardy to the residents of the continuing care retirement

community, creditors, owners of the continuing care retirement community, and to the public.

(c) An order terminating the rehabilitation proceeding shall be based upon a full report and accounting by the administrator of the conduct of the provider's officers, employees, and business during the rehabilitation and of the provider's current financial condition.

(d) Upon issuance of an order terminating the rehabilitation, the department shall reinstate the provisional or final certificate of authority and may condition, suspend, or revoke the reinstated certificate only upon a change in the conditions at the time of the order or a determination of facts which, if such facts had been known at the time of the order, the court would not have entered the order as determined by the department.

SEC. 70. Section 1793.60 of the Health and Safety Code is amended to read:

1793.60. (a) If at any time the department determines that further efforts to rehabilitate the provider would not be in the best interest of the residents or prospective residents, or would not be economically feasible, the director may, with the approval of the Continuing Care Contracts Committee, apply to the court for an order of liquidation and dissolution or may apply for other appropriate relief for dissolving the property and bringing to conclusion its business affairs.

(b) Upon issuance of an order directing the liquidation or dissolution of the provider, the department shall revoke the provider's provisional or final certificate of authority.

SEC. 71. Section 1793.62 of the Health and Safety Code is amended to read:

1793.62. (a) The department, administrator, or any interested person, upon due notice to the parties, may petition the court for an order terminating the rehabilitation proceedings when the rehabilitation efforts have not been successful, the continuing care retirement community has been sold at foreclosure sale,

the provider has been declared bankrupt, or the provider has otherwise been shown to be unable to perform its obligations under the continuing care contracts.

(b) No order shall be granted unless all of the following have occurred:

(1) There has been a full hearing and the court has determined that the provider is unable to perform its contractual obligations.

(2) The administrator has given the court a full and complete report and financial accounting signed by the administrator as being a full and complete report and accounting.

(3) The court has determined that the residents of the continuing care retirement community have been protected to the extent possible and has made such orders in this regard as the court deems proper.

SEC. 72. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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