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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



1 to receive care at the retirement community for the rest
2 of their lives, tragic consequences can result from a
3 continuing care provider becoming insolvent or unable
4 to provide responsible care.

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

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

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

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

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

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

28 1771. Unless the context otherwise requires, the
29 definitions in this section govern the interpretation of this
30 chapter.

31 (a) (1) “Affinity group” means a grouping of
32 individuals sharing a common interest, philosophy, or
33 connection (e.g., military officers, religion, etc.).

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



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

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

6 (b) [reserved]

7 (c) (1) “Cancellation” means to destroy the force and
8 effect of an agreement or continuing care contract, by
9 making or declaring it void or invalid.

10 (2) “Cancellation period” means the 90-day period,
11 beginning when the transferor signs the continuing care
12 contract, during which time the resident or transferor
13 may rescind the continuing care contract.

14 (3) “Care” means nursing, medical, or other health
15 related services, protection or supervision, or assistance
16 with the personal activities of daily living, or any
17 combination of those services.

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

23 (5) “Certificate” or “certificate of authority” means
24 the written authorization from the department for a
25 specified provider to enter into one or more continuing
26 care contracts at a single specified continuing care
27 retirement community.

28 (6) “Condition” means a restriction or required action
29 placed on a provisional or final certificate of authority by
30 the department. A condition may limit the circumstances
31 under which the provider may enter into any new
32 contract, or may be a condition precedent to the issuance
33 of a final certificate of authority.

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

38 (8) “Continuing care contract” means a written
39 contract, which includes a promise, expressed or implied,
40 by a provider to provide one or more elements of care to



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

9 (9) “Continuing care contract committee” means an
10 advisory panel appointed pursuant to Section 1777.

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

21 (11) “Control” means the power to direct or cause the
22 direction of the management and policies of an operator
23 of a continuing care retirement community, whether
24 through the ownership of voting securities, by contract or
25 otherwise. A parent or sole corporate member of a
26 corporation may exhibit control of the operator of the
27 continuing care retirement community through direct
28 participation in the initiation or approval of policies
29 directly affecting the operations, including, but not
30 limited to, approval of budgets or approval of the
31 continuing care retirement community administrator.

32 (d) (1) “Department” means the State Department
33 of Social Services.

34 (2) “Deposit subscription” means cash or cash
35 equivalent payment made by a subscriber to an applicant
36 and the escrow agent prior to the release of escrow during
37 development or construction of a continuing care
38 retirement community.

39 (3) “Deposit subscription agreement” means a
40 written contract in compliance with Section 1780.4



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

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

14 (5) “Director” means the Director of the State
15 Department of Social Services.

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

18 (2) “Entity” means an organization or being that
19 possesses separate existence for tax purposes. Entity
20 includes person, sole proprietorship, estate, trust,
21 association, joint venture, partnership, and corporation.

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



1 (4) “Equity” means the residual value of a business or
2 property beyond any mortgage or deed of trust thereon
3 and liability therein.

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

9 (6) “Escrow agent” means a bank or institution,
10 including, but not limited to, a title insurance company,
11 approved by the department as capable of ensuring the
12 safety of the funds and properties entrusted to it and
13 capable and willing to perform the terms of the escrow
14 pursuant to the escrow agreement and the provisions of
15 this chapter.

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

21 (g) [reserved]

22 (h) [reserved]

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

29 (j) [reserved]

30 (k) [reserved]

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



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

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

9 (m) (1) “Monthly care fee” means the monthly
10 charge to a resident for accommodations and services
11 rendered, including care, board, or lodging, and any
12 other periodic charges to the resident, determined on a
13 monthly or other recurring basis, pursuant to the
14 provisions of a continuing care contract. Monthly care
15 fees are exclusive of periodic entrance fee payments or
16 other prepayments.

17 (2) “Monthly fee contract” means a continuing care
18 contract that provides by its terms for the monthly
19 payment of a fee for accommodations and services
20 rendered.

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

24 (o) [reserved]

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

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

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

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



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

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

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

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

16 (8) “Proposes” means a representation that an
17 applicant or provider plans to make a future promise to
18 provide care, which may be subject to the happening of
19 certain events, such as continuing care retirement
20 community construction or obtaining a certificate of
21 authority.

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

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

35 (q) [reserved]

36 (r) (1) “Refundable reserve” means the amount
37 calculated to ensure the availability of funds for specified
38 refunds of entrance fees.

39 (2) “Refundable contract” means a continuing care
40 contract form that includes promises, expressed or



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

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

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

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

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

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

30 (t) (1) "Termination" means the ending of a
31 continuing care contract as provided for in the terms of
32 the continuing care contract.

33 (2) "Transfer" means conveyance of a right, title, or
34 interest.

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

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



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

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

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

14 1771.2. (a) No entity proposing to promise to provide
15 care shall enter into a deposit subscription agreement or
16 sell a deposit subscription unless the entity has applied for
17 and received a current and valid permit to sell deposit
18 subscriptions.

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

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

32 (d) If an entity enters into an agreement to provide
33 care for life or for more than one year to a person under
34 60 years of age in return for payment of an entrance fee
35 or periodic charges, and the agreement includes the
36 provision of services to that person after age 60, the entity
37 shall either terminate the continuing care contract or
38 meet all requirements of this chapter when the first such
39 person turns 60 years of age.



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

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

5 1771.4. Any entity which promises to provide care for
6 life or for more than one year in return for payment of an
7 entrance fee or periodic charges from, or on behalf of, a
8 person 60 years of age or older shall first obtain written
9 licenses for the entire continuing care retirement
10 community pursuant to Chapter 3.2 (commencing with
11 Section 1569), including residential living and personal
12 care units, and Chapter 2 (commencing with Section
13 1250) if a skilled nursing facility is on the premises.

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

16 1771.5. (a) A continuing care retirement community
17 shall maintain an environment that enhances the
18 residents' self-determination and independence. The
19 provider shall:

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

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



1 determine their effectiveness in maintaining meaningful
2 resident/management relations.

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

9 (c) Failure to comply with this section shall be grounds
10 for suspension, condition, or revocation of the provisional
11 or final certificate of authority pursuant to Section
12 1793.21.

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

15 1771.6. (a) This chapter does not apply to any of the
16 following:

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

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

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

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

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

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

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

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

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



1 1771.8. (a) Any entity which believes its project is not
2 subject to this chapter or which is contemplating a project
3 which it believes may not be subject to this chapter, may
4 apply to the department for a Letter of Non-applicability.

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

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

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

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

14 (4) Copies of all advertising material.

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

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

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

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

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

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

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

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

38 1772. (a) Except as otherwise provided in paragraph
39 (5) of subdivision (a) of Section 1788, no report, circular,
40 public announcement, certificate, financial statement, or



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

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

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

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

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

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



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

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

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

8 1773. No certificate of authority has value for sale or
9 exchange as property. No provider shall sell or transfer
10 ownership of the continuing care retirement community
11 or enter into a contract with a third party entity for
12 management of the continuing care retirement
13 community without the approval of the department.
14 Violation of this section is grounds for revocation of the
15 certificate of authority.

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

18 1775. (a) To the extent that this chapter conflicts
19 with the statutes, regulations, or interpretations enforced
20 by the Department of Real Estate, this chapter as
21 interpreted by the department shall have precedence.

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

15 1777.2. (a) The Continuing Care Contracts
16 Committee shall:

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

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

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

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

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

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



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

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

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

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

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

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

28 1778. (a) There is hereby created in the State
29 Treasury a fund which shall be known as the Continuing
30 Care Provider Fee Fund. The fund shall consist of fees
31 received by the department pursuant to this chapter.
32 Notwithstanding Section 13340 of the Government Code,
33 the Continuing Care Provider Fee Fund is hereby
34 continuously appropriated to the department, without
35 regard to fiscal years.

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

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



1 ~~or above; Financial Analyst; two Staff Services~~
2 ~~Analyst/Associate Governmental Program Analyst;~~
3 ~~Office Technician; and legal support to include one~~
4 ~~full-time Senior Staff Counsel or above. Manager at a~~
5 ~~level consistent with other management classifications~~
6 ~~that direct a regulatory program with statewide impact~~
7 ~~requiring skills and knowledge at the highest level with~~
8 ~~responsibility for work of the most critical or sensitive~~
9 ~~nature as it relates to the department's mission, including~~
10 ~~protecting vulnerable elderly persons, supervising~~
11 ~~technical staff with oversight of highly complex~~
12 ~~operations and responsibility for policy and program~~
13 ~~evaluation and recommendations; full-time legal counsel~~
14 ~~with a working knowledge of all laws relating to the~~
15 ~~regulation of continuing care retirement communities~~
16 ~~and residential care facilities for the elderly; financial~~
17 ~~analyst with working knowledge of generally accepted~~
18 ~~accounting principles and auditing standards; and other~~
19 ~~appropriate analytical and technical support positions.~~

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

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

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

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

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



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

3 1779. (a) An application for a permit to sell deposit
4 subscriptions and certificate of authority shall be filed
5 with the department, as set forth in this chapter, in any
6 of the following circumstances:

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

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

11 (3) Prior to initiating construction on a new phase or
12 expansion of an existing continuing care retirement
13 community. An expansion has occurred when there is an
14 increase in Residential Care Facility for the Elderly
15 license capacity, an increase in the number of units at the
16 continuing care retirement community, an increase in
17 the number of skilled nursing beds, or additions to or
18 replacement of existing continuing care retirement
19 community structures that affects obligations to current
20 residents. The department has the discretion to eliminate
21 all or portions of the application contents required under
22 Section 1779.4 for an expansion of an existing continuing
23 care retirement community.

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

26 (5) Prior to recommencing marketing on a planned
27 facility when the applicant has previously forfeited a
28 permit to sell deposit subscriptions pursuant to Section
29 1793.7.

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

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

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



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

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

10 1779.2. (a) A formal application shall be made by a
 11 person or organization to the department for a permit to
 12 sell deposit subscriptions and certificate of authority, as
 13 provided in this chapter.

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

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

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

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

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

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



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

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

12 (2) Payment to the Continuing Care Provider Fee
13 Fund of the remainder of the application fee shall be
14 made at or before the time of issuance of the provisional
15 certificate of authority. The application fee shall be
16 calculated as one-tenth of 1 percent of the purchase price
17 of the continuing care retirement community, or the
18 actual construction cost, including the purchase price of
19 the land or the present value of any long-term lease, less
20 the payment included with the application. The
21 provisional certificate of authority shall not be issued until
22 the balance of the fee is paid.

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

25 1779.4. An application shall contain all of the
26 following:

- 27 (a) The name and business address of the applicant.
- 28 (b) An itemization of the total fee calculation,
29 including sources of figures used, and a check in the
30 amount of 80 percent of the total application fee.
- 31 (c) The name, address, and a description of the real
32 property of the continuing care retirement community.
- 33 (d) The estimated number of continuing care
34 residents of the continuing care retirement community.
- 35 (e) A description of the proposed continuing care
36 retirement community, including the services and care to
37 be available for residents or provided to residents, or
38 both.



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

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

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

14 (i) A description of any matter in which any principal
15 involved with the proposed continuing care retirement
16 community has been convicted of a felony or pleaded
17 nolo contendere to a felony charge, or been held liable or
18 enjoined in a civil action by final judgment, if the felony
19 or civil action involved fraud, embezzlement, fraudulent
20 conversion, or misappropriation of property. For the
21 purpose of this paragraph, “principal” means any
22 representative of the developer or applicant including a
23 general partner, chief executive officer, or chief
24 operating officer who has significant decisionmaking
25 authority with respect to the proposed continuing care
26 retirement community.

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

30 (1) A statement naming the type of legal entity and
31 listing the interest and extent of the interest of each
32 principal in the legal entity. For the purposes of this
33 paragraph, “principal” means any person or entity
34 having a 10 percent or more financial interest in the legal
35 entity. When the application is submitted in the name of
36 a corporation, the parent, sole corporate shareholder, or
37 sole corporate member shall be listed as an applicant,
38 when that parent, sole corporate shareholders, or sole
39 corporate member controls the operation of the
40 continuing care retirement community. When multiple



1 corporate applicants exist, they shall be listed jointly by
2 corporate name on the application, and the certificate of
3 authority shall be issued in the joint names of the
4 corporations. When the application is submitted by a
5 partnership, all general partners shall be listed as
6 applicants and the certificate of authority shall be issued
7 in the joint names of the general partners.

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

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

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

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

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



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

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

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

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

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

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

15 (q) Copies of all escrow agreements.

16 (r) A statement of any periodic fees to be paid by
17 residents, the components and services considered in
18 determining such fees, and the manner by which the
19 provider may adjust these fees in the future. If the
20 continuing care retirement community is already in
21 operation, or if the provider operates one or more similar
22 continuing care retirement communities within this
23 state, the statement shall include tables showing the
24 frequency and each percentage increase in periodic rates
25 at each continuing care retirement community for the
26 previous five years, or such shorter period as each
27 continuing care retirement community may have been
28 operated by the provider or his or her predecessor in
29 interest.

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

36 (t) A copy of audited financial statements for the three
37 most recent fiscal years of the applicant or any shorter
38 period of time the applicant has been in existence,
39 prepared in accordance with generally accepted
40 accounting principles and accompanied by an



1 independent auditor's report from a reputable firm of
2 certified public accountants. The audited financial
3 statements shall be accompanied by a statement signed
4 and dated by both the chief financial officer and chief
5 executive officer for the identified corporation, or by
6 each general partner, that the financial statements are
7 complete, true, and correct in all material matters to the
8 best of their knowledge.

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

19 (v) A financial and marketing feasibility study
20 prepared by a firm acceptable to the department. The
21 study shall include or address, as appropriate, all of the
22 following items:

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

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

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

- 1 (B) Equity to be contributed by the applicant.
- 2 (C) Other sources of funds, including entrance fees, if
- 3 applicable.
- 4 (D) An estimate of the cost of purchasing, leasing,
- 5 renting, designing, or constructing and equipping the
- 6 continuing care retirement community, including, but
- 7 not limited to, such related costs as financing expense,
- 8 legal expense, land costs, occupancy development costs,
- 9 and all other similar costs which the provider expects to
- 10 incur, or become obligated for, prior to the
- 11 commencement of operation.
- 12 (E) Interest expense, insurance premiums, and
- 13 property taxes prior to opening.
- 14 (F) An estimate of any proposed continuing care
- 15 retirement community reserves required for items such
- 16 as debt service, insurance premiums, and operations.
- 17 (G) An estimate of any funds which are anticipated to
- 18 be necessary to fund startup losses and to assure full
- 19 performance of the obligations of the provider pursuant
- 20 to continuing care contracts, including, but not limited to,
- 21 any reserve fund escrow.
- 22 (3) An analysis of the potential market, addressing
- 23 such items as:
 - 24 (A) Service area, including its demographic,
 - 25 economic, and growth characteristics.
 - 26 (B) Forecasts of penetration based on the proposed
 - 27 fee structure.
 - 28 (C) Existing and planned competition in and about
 - 29 the primary service area.
- 30 (4) A detailed description of the sales and marketing
- 31 plan, addressing such items as:
 - 32 (A) Marketing schedule, anticipated sales, and
 - 33 cancellation rates.
 - 34 (B) Month-by-month forecast of unit sales through
 - 35 sellout.
 - 36 (C) A marketing plan describing the methods,
 - 37 staffing, and advertising media.
- 38 (D) An estimate of the total entrance fees to be
- 39 received from residents prior to completion of
- 40 occupancy.



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

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

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

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

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

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

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

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



- 1 (ii) Cash-flows from monthly operations, including,
- 2 but not limited to, monthly fees received from continuing
- 3 care contracts, medical unit fees if applicable, other
- 4 periodic fees, and gifts and bequests used in operations
- 5 less operating expenses.
- 6 (iii) Contractual cash-flows from activities, including,
- 7 but not limited to, presales, deposit subscription receipts,
- 8 and entrance fee receipts less contract acquisition,
- 9 marketing, and advertising expenditures.
- 10 (iv) Cash-flows from financing activities, including,
- 11 but not limited to, bond or loan proceeds less bond issue
- 12 or loan costs and fees, debt service including CAL
- 13 Mortgage Insurance premiums, trustee fees, principal
- 14 and interest payments, leases, contracts, rental
- 15 agreements, or other long-term financing.
- 16 (v) Cash-flow from investment activities, including,
- 17 but not limited to, construction progress payments,
- 18 architect and engineering, furnishings, and equipment
- 19 not included in the construction contract, project
- 20 development, inspection and testing, marketable
- 21 securities, investment earnings, and interfund transfers.
- 22 (vi) Increase or decrease in cash during the projection
- 23 period.
- 24 (vii) The beginning cash balance, which means cash,
- 25 marketable securities, reserves, and other funds on hand
- 26 available and committed to the proposed continuing care
- 27 retirement community.
- 28 (viii) Cash balance at the end of the period.
- 29 (ix) Details of the components of the ending cash
- 30 balance shall be provided for each period presented,
- 31 including, but not limited to, the ending cash balances for
- 32 bond reserves, other reserve funds, deposit subscription
- 33 funds, and construction funds balance.
- 34 (3) If the cash-flow statements required by paragraph
- 35 (B) indicate that the provider will have cash balances
- 36 over and above two months' projected operating
- 37 expenses of the continuing care retirement community,
- 38 a description of the manner in which the cash balances
- 39 will be invested, and the persons who will be making the
- 40 investment decisions, shall accompany the application.



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

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

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

20
 21 NOTICE OF STATUTORY LIMITATION ON
 22 TRANSFER
 23

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

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

38 (2) The notice shall remain in effect until notice of
 39 release is given by the State Department of Social
 40 Services Continuing Care Contract Branch. The State



1 Department of Social Services Continuing Care
2 Contracts Branch shall execute and record a release of the
3 notice upon proof of complete performance of all
4 obligations to transferors.

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

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

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

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

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

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

38 1779.6. (a) Within seven calendar days of receipt of
39 an initial application for a permit to sell deposit



1 subscriptions and certificate of authority, the department
2 shall acknowledge receipt of the application in writing.

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

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

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

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

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

24 (1) Review the application for adequacy.

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

27 (3) Review the financial plan for feasibility.

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

31 (d) Within 30 calendar days after its receipt of any
32 additional information or clarification required from the
33 applicant, the department shall respond to the applicant's
34 submission in writing, including its determination
35 whether each specific deficiency has been addressed and
36 whether the application is adequate. If the department
37 determines that the application is adequate and in
38 compliance with this chapter, the department shall act to
39 issue the permit to sell deposit subscriptions. If the
40 department determines that the response is inadequate,



1 it may request additional information or clarification
2 from the applicant pursuant to subdivision (c) or deny
3 the application pursuant to Section 1779.10.

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

6 1779.8. (a) The applicant shall notify the department
7 of material changes in the information submitted by the
8 applicant to the department in the application materials.

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

15 (c) Within 30 calendar days after receiving notice of
16 the proposed change, the department shall inform the
17 applicant of any additional or amended information
18 needed to process the pending application, or whether a
19 new application and application fee must be submitted.
20 The new application fee shall be twice the actual cost of
21 additional consultant review time caused by the change.
22 This additional fee is payable to the department on
23 demand.

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

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

31 1779.10. (a) The department shall deny an
32 application for a permit to sell deposit subscriptions and
33 certificate of authority if any of the following exists:

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

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

38 (3) Failure to submit evidence to support a reasonable
39 belief that any principal of the proposed continuing care
40 retirement community who has committed any offenses



1 listed in subdivision(i) of Section 1779.4 is of such good
2 character to indicate rehabilitation.

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

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

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

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

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

18 (1) State that the application is denied.

19 (2) List the reasons for the denial.

20 (3) Explain the right of appeal.

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

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

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

30 1780. The department shall issue a permit to sell
31 deposit subscriptions when it has:

32 (a) Determined that the application is complete.

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

36 (c) Reviewed and approved the deposit subscription
37 agreement.

38 (d) Reviewed and approved the escrow agreement.

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



1 1780.2. (a) A deposit subscription may be made in
2 one or several payments, to begin at the time the parties
3 enter into the deposit subscription agreement.

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

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

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

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

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

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

22 1780.4. (a) All deposit subscription agreements
23 entered into between the applicant and the subscriber
24 shall be in writing and shall contain all information
25 required by this section.

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

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

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

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

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



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

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

4 (A) The amount.

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

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

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

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

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

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

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

37 (f) A schedule of projected monthly care fees
38 estimated to be charged to residents for each of the first
39 five years of the facility's existence shall be attached to
40 each deposit subscription agreement. The schedule shall



1 contain a conspicuous statement in at least 10-point
2 boldface type that the projected fees are an estimate only
3 and may be changed without notice.

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

6 1781. (a) All deposit subscriptions, excluding
7 processing fees, shall be placed in an escrow account, the
8 terms of which must be approved in advance by the
9 department.

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

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

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

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

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

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

27 (d) Funds shall remain in escrow until the department
28 has authorized their release in accordance with Section
29 1783.2.

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

34 (f) No funds deposited in an escrow account shall be
35 subject to any liens, judgments, garnishments, or
36 creditor's claims against the applicant or continuing care
37 retirement community. Neither shall these funds be
38 subject to any liens or charges by the escrow agent, except
39 transaction fees, commissions, prepayment penalties, and



1 other fees incurred in connection with the payment of
2 cash equivalent deposit subscriptions.

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

5 1781.2. (a) Payments pursuant to deposit
6 subscriptions shall be deposited with the escrow agent
7 within five business days after their receipt from
8 subscribers and shall be accounted for in a separate
9 escrow account.

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

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

17 1781.4. The escrow agreement between the applicant
18 and the escrow agent shall provide for all of the following:

19 (a) The amount of the processing fee.

20 (b) Deposit of funds in the escrow account.

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

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

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

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

30 (4) The total deposit subscription for the unit.

31 (5) The total entrance fee for the unit.

32 (6) Twenty percent of the total entrance fee.

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

35 (8) The unpaid balance of each deposit subscription.

36 (9) The unpaid balance of each entrance fee.

37 (10) The current balance in the escrow account.

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

40 (d) Investment of escrow account funds.



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

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

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

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

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

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

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

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

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

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

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

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

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

39 (B) For applications, *and for those phases of the*
40 *project that were identified as part of applications,*



1 submitted on or before May 31, 1995, at least 20 percent
2 of each applicable entrance fee shall be received for at
3 least 60 percent of residential units projected to be
4 occupied six months after the continuing care retirement
5 community is opened for operation.

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

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

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

12 1783. (a) No building, which has been constructed by
13 the applicant or related parties without prior written
14 approval of the department for commencement of
15 construction, shall be permitted to be converted to a
16 continuing care retirement community until five years
17 have elapsed from the completion of construction. This
18 section shall not apply to expansions of existing
19 continuing care retirement communities.

20 (b) If existing buildings are to be converted to a
21 continuing care use, the applicant shall comply with all
22 application requirements necessary to assess the
23 feasibility of the proposed continuing care retirement
24 community as determined by the department pursuant
25 to Section 1779.4; provided, however, that the
26 department may waive or modify the presales
27 requirements of subparagraphs (A) and (B) of paragraph
28 (1) of subdivision (a) of Section 1783.2 and paragraph (2)
29 of subdivision (a) of Section 1786 if the facility is already
30 occupied. This section shall not apply to expansions of
31 existing continuing care retirement communities.

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



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

3 1783.2. (a) Refunds to subscribers shall be disbursed
4 as follows:

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

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

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

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

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

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

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

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

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

39 (2) The department shall instruct the escrow agent to
40 release to the applicant all deposit subscriptions which



1 have been placed in escrow pursuant to Section 1781
2 when all of the following requirements have been met:

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

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

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

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

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

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

23 1784. (a) If construction of the proposed continuing
24 care retirement community, or applicable phase, has not
25 commenced within 36 months from the date the permit
26 to sell deposit subscriptions is issued, an applicant may
27 request an extension of the permit to sell deposit
28 subscriptions. The request for extension shall be made to
29 the department in writing and shall include the reasons
30 why construction of the proposed continuing care
31 retirement community was not commenced within the
32 36-month time period, and the new estimated date for
33 commencement of construction.

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

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

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

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

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

15 1785. (a) If, at any time prior to issuance of a
 16 certificate of authority, the applicant’s average
 17 performance over any six-month period does not
 18 substantially equal or exceed the applicant’s projections
 19 for that period, the department, after consultation and
 20 upon consideration of the recommendations of the
 21 Continuing Care Contracts Committee, may take any of
 22 the following actions:

- 23 (1) Cancel the permit to sell deposit subscriptions.
- 24 (2) Increase the required percentages of construction
 25 completed, units reserved, or entrance fees to be
 26 deposited as required under Sections 1782, 1783.2, 1786,
 27 and 1786.2.
- 28 (3) Increase the reserve requirements under this
 29 chapter.
- 30 (b) Prior to taking any actions specified in subdivision
 31 (a), the department shall give the applicant an
 32 opportunity to submit a feasibility study from a consultant
 33 in the area of continuing care, approved by the
 34 department, to determine whether in his or her opinion
 35 the proposed continuing care retirement community is
 36 still viable, and if so, to submit a plan of correction. The
 37 department, in consultation with the committee, shall
 38 determine if the plan is acceptable.



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

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

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

11 1786. (a) In order to permit an applicant to become
12 a provider and enter into continuing care contracts, the
13 department shall issue a provisional certificate of
14 authority when a provider has done all of the following:

15 (1) Complied with the approved marketing plans.

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

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

23 (4) Obtained the required licenses.

24 (5) Paid the remainder of the application fees.

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

27 (7) Met all applicable provisions of this chapter.

28 (b) The provisional certificate of authority shall expire
29 12 months after issuance unless the following occur:

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

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

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



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

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

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

13 1786.2. (a) A certificate of authority shall not be
14 issued to a provider, unless the department determines
15 that all of the following have occurred:

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

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

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

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

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



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

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

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

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

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

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

20 1787. (a) All continuing care contracts entered into
21 between the provider and the transferor shall be in
22 writing and shall contain all information required by
23 Section 1788.

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

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

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

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

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

37 (g) A clearly legible copy of the continuing care
38 contract, executed by the provider and a transferor, shall
39 be furnished, with all required or included attachments
40 to the transferor at the time the continuing care contract



1 is executed and shall be furnished within 10 calendar days
2 to the resident if the resident is other than the transferor.

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

8 (i) The continuing care contract shall constitute an
9 admissions agreement for purposes of the residential care
10 facility for the elderly and long-term health care facility
11 requirements. The continuing care contract may state
12 the entitlement for skilled nursing care in accordance
13 with the provisions of law governing admissions to
14 long-term health care facilities in effect at the time of
15 admission to the skilled nursing facility. The parties may
16 agree to the terms of nursing facility admission at the time
17 the continuing care contract is executed, or the provider
18 may present an exemplar of the then-current nursing
19 facility admission agreement and require the resident to
20 execute the form of agreement in effect at the time of
21 admission to the nursing facility. These terms shall
22 include the nursing fee, or the method of determining the
23 fee, at the time of the execution of the continuing care
24 agreement, the services included in and excluded from
25 the fee, the grounds for transfers and discharges, and any
26 other terms required to be included under federal law.

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

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

38 1788. (a) Any continuing care contract shall contain
39 all of the following:

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



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

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

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

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

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

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

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

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

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

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

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

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

36 (F) Personal care.

37 (G) Assistance with taking medications.

38 (H) Central storing and distribution of medications.

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

20 (B) With respect to the transfer of real property, a
21 statement that the deed or other instrument of
22 conveyance shall contain a recital that the transaction is
23 made pursuant to a “continuing care contract” and may
24 be subject to rescission by the transferor within 90 days
25 from the date of the transfer.

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

29 (17) The amount of the entrance fee.

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

34 (19) The amount of any processing fee.

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

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



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

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

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

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

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

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

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

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

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

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

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

38 (23) The continuing care contract shall provide for
39 notification of the resident at least 30 days in advance of



1 any change in the scope or price of any component of care
2 or other services.

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

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

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

22 (27) A conspicuous statement, in at least 10-point
23 boldface type in immediate proximity to the space
24 reserved for the signature of the transferor, that provides
25 as follows: "You, the transferor, may cancel the
26 transaction without cause at any time within 90 days from
27 the date of this transaction. See the attached notice of
28 cancellation form for an explanation of this right."

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

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

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



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

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

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

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

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

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

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

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

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

35
36 “NOTICE” (date)
37

38 This is a continuing care contract as defined by Section
39 1771(j) or 1771(w) of Chapter 10 of Division 2 of the
40 California Health and Safety Code. This contract form has



1 been approved by the State Department of Social
2 Services as required by Section 1787(b) of the California
3 Health and Safety Code. The basis for this approval was
4 a determination that (provider name) has complied with
5 specific requirements of the statutes. Approval by the
6 department is neither a guaranty of performance nor an
7 endorsement of contract provisions. Prospective
8 transferors and residents are encouraged to carefully
9 consider the benefits and risks of this contract before
10 signing. You should seek financial and legal advice as
11 needed.

12
13 (b) A life care contract shall also include all of the
14 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

39 (13) Other provisions approved by the department.



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

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

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

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

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

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

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

36
37 "NOTICE OF CANCELLATION" (date)
38
39 (Enter date of transaction)
40



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

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

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

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

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

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

27
28 to _____
29 (Name of provider)

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

32 not later than midnight of _____ (date).

33
34 I hereby cancel this
35 transaction _____
36 (Transferor's signature)

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



1 1788.2. (a) The continuing care contract may be
2 canceled without cause by written notice from either
3 party, within 90 days from the date of the transaction.

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

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

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

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

19 (d) The following fees may be charged during the
20 90-day cancellation period:

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

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

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

36 (B) Upon the cancellation of a continuing care
37 contract that is not executed in conjunction with the
38 purchase of an equity interest from the provider, the
39 transfer fee shall be no greater than the sum of 10 percent
40 of either the original or resale price of the equity interest



1 and 100 percent of the excess, if any, of the gross resale
2 price of the equity interest over the purchase price paid
3 by the transfer for the interest.

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

12 (f) For purposes of this section, “gross resale price”
13 means the resale price before any deductions for transfer
14 fees, transfer taxes, real estate commissions, periodic fees,
15 late charges, interest, escrow fees, or any other fees
16 incidental to the sale of real property.

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

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

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

27 1788.4. (a) Except during the cancellation period
28 any refunds due pursuant to the continuing care contract
29 shall be paid within 14 calendar days after a resident
30 makes possession of the living unit available to the
31 provider, or within 90 calendar days after cancellation,
32 death, or receipt of notice of termination, whichever is
33 later.

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

39 (c) When additional fees have been paid for unit
40 upgrades, these charges shall amortize at the same rate as



1 the entrance fee. The transferor shall be refunded the
2 unamortized balance.

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

5 1789. (a) Proposed changes of entity name,
6 structure, organization, operation, overall management
7 of the continuing care retirement community, or
8 financing shall be submitted to the department for
9 review and approval.

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

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

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

17 1789.2. (a) Any provider contemplating capital
18 financing that would entail a mortgage or deed of trust for
19 any property on which a resident resides pursuant to a
20 continuing care contract shall provide the department
21 with written notification at least 90 calendar days prior to
22 the execution of the proposed transaction which includes
23 all of the following:

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

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

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

30 (4) An analysis of the impact that the contemplated
31 encumbrance of real property would have on assets
32 available for statutory reserves required by Section
33 1792.2, and refund reserves required by Section 1793.

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

38 (c) If the department determines that the proposed
39 capital financial transaction will materially increase
40 monthly fees or impair the provider's ability to maintain



1 required reserves, the department may refuse to approve
2 the transaction, may record a notice of lien on the
3 provider's property pursuant to Section 1793.15, after
4 notifying the provider and giving the provider an
5 opportunity to withdraw the planned transaction, or take
6 any other action that it determines to be in the best
7 interest of the residents.

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

10 1789.4. (a) Any provider who proposes to sell or
11 transfer ownership of a continuing care retirement
12 community to another party shall obtain approval from
13 the department before consummating the sale or
14 transfer.

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

19 (1) Identification of the proposed purchaser.

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

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

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

28 (1) A description of the parties.

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

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

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

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

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



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

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

7 1789.6. All providers shall record and maintain a
8 “Notice of Statutory Limitation on Transfer” as required
9 by paragraph (24) of subdivision (a) of Section 1779.4.

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

12 1789.8. Each provider shall obtain and maintain in
13 effect insurance or a fidelity bond for any agent or
14 employee, who, in the course of his or her agency or
15 employment, has access to any substantial amount of
16 funds. This requirement is separate from the bonding
17 requirements of Residential Care Facility for the Elderly
18 regulations.

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

21 1790. (a) Each provider, that has obtained a
22 provisional or final certificate of authority, and each
23 provider that possesses an inactive certificate of
24 authority, shall submit an annual report of its financial
25 condition. The report shall consist of audited financial
26 statements and required reserve calculations, with
27 accompanying certified public accountants’ opinions
28 thereon, Continuing Care Provider Fee and Calculation
29 Sheet, resident listings, evidence of fidelity bond as
30 required by Section 1789.8, and certification that the
31 continuing care contract in use for new residents has
32 been approved by the department, all in a format
33 provided by the department, and shall include all of the
34 following information:

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

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



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

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

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

9 (b) Each provider shall file the annual report with the
10 department within four months after the provider's fiscal
11 year end. If the complete annual report is not received by
12 the due date, a one thousand dollar (\$1,000) late fee shall
13 accompany submission of the reports. If the reports are
14 more than 30 days past due, an additional fee of
15 thirty-three dollars (\$33) for each day over the first 30
16 days shall accompany submission of the report. The
17 department may, at its discretion, waive the late fee for
18 good cause.

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

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

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

31 (f) If a provider is no longer entering into continuing
32 care contracts, and currently is caring for 10 or fewer
33 continuing care residents, the provider may request
34 permission from the department, in lieu of filing the
35 annual report, to establish a trust fund or to secure a
36 performance bond to ensure fulfillment of continuing
37 care contract obligations. The request shall be made each
38 year within 30 days after the provider's fiscal year end.
39 The request shall include the amount of the trust fund or
40 performance bond determined by calculating the



1 projected life costs, less the projected life revenue, for the
2 remaining continuing care residents in the year the
3 provider requests the waiver. If the department approves
4 the request, the following shall be submitted to the
5 department annually:

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

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

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

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

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

26 1791. (a) An annual fee shall be required of each
27 provider which has obtained a provisional or final
28 certificate of authority.

29 (b) Each annual report submitted pursuant to Section
30 1790 shall be accompanied by a payment to the
31 Continuing Care Provider Fee Fund in the amount of
32 one-tenth of 1 percent of the portion of total operating
33 expenses, excluding debt service and depreciation from
34 audited financial statements, which has been allocated to
35 continuing care contract residents. The allocation shall be
36 based on the ratio of the mean number of total residents.

37 (c) If a provider is granted an exemption from filing
38 annual reports to the department pursuant to subdivision
39 (f) of Section 1790, the minimum annual provider fee
40 shall be two hundred fifty dollars (\$250). This fee shall be



1 submitted after the end of the provider's fiscal year with
2 proof of trust fund or performance bond as required by
3 subdivision (f) of Section 1790.

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

6 1792. (a) Any provider furnishing care pursuant to a
7 prepaid continuing care contract executed after January
8 1, 1979, shall establish a reserve fund escrow account with
9 an escrow agent, in an amount which equals the
10 aggregate principal and interest, rental, or lease
11 payments due during the next 12 months on account of
12 any first mortgage or other long-term financing of the
13 continuing care retirement community or any leases or
14 other rental agreement for a continuing care retirement
15 community.

16 (b) The principal of the escrow account may be
17 invested, as provided in subparagraphs (A) through (E),
18 inclusive, of paragraph (3) of subdivision (e) of Section
19 1792.2 concerning investment of reserve funds, with the
20 earnings thereon payable to the provider.

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

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

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

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

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

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

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



1 1792.2. (a) Any entity that has executed or assumed
2 continuing care contracts shall maintain reserves
3 covering obligations thereunder.

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

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

8	9	Age	Females	Males	Age	Females	Males
10	55	26.323	23.635	83	7.952	6.269	
11	56	25.526	22.863	84	7.438	5.854	
12	57	24.740	22.101	85	6.956	5.475	
13	58	23.964	21.350	86	6.494	5.124	
14	59	23.199	20.609	87	6.054	4.806	
15	60	22.446	19.880	88	5.613	4.513	
16	61	21.703	19.163	89	5.200	4.236	
17	62	20.972	18.457	90	4.838	3.957	
18	63	20.253	17.764	91	4.501	3.670	
19	64	19.545	17.083	92	4.175	3.388	
20	65	18.849	16.414	93	3.862	3.129	
21	66	18.165	15.759	94	3.579	2.903	
22	67	17.493	15.116	95	3.329	2.705	
23	68	16.832	14.486	96	3.109	2.533	
24	69	16.182	13.869	97	2.914	2.384	
25	70	15.553	13.268	98	2.741	2.254	
26	71	14.965	12.676	99	2.584	2.137	
27	72	14.367	12.073	100	2.433	2.026	
28	73	13.761	11.445	101	2.289	1.919	
29	74	13.189	10.830	102	2.152	1.818	
30	75	12.607	10.243	103	2.022	1.723	
31	76	12.011	9.673	104	1.899	1.637	
32	77	11.394	9.139	105	1.784	1.563	
33	78	10.779	8.641	106	1.679	1.510	
34	79	10.184	8.159	107	1.588	1.500	
35	80	9.620	7.672	108	1.522	1.500	
36	81	9.060	7.188	109	1.500	1.500	
37	82	8.501	6.719	110	1.500	1.500	

38
39 The life expectancy table set forth in this paragraph
40 shall be used until this section is amended.



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

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

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

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

12 (1) Compute net cash per capita costs:

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

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

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

33 (C) Total mean number of residents: Add the total
34 number of residents at the beginning of the fiscal year to
35 the total number of residents at the end of the fiscal year
36 and divide by two. For continuing care retirement
37 communities wherein resident population fluctuates
38 significantly from month to month and for continuing
39 care retirement communities in their first year of
40 operation, the mean number of residents by level of care



1 or the total mean number may be computed by adding
2 the number of residents at the end of each month in the
3 fiscal year and dividing by the total number of months
4 included. The daily attendance for the fiscal year may also
5 be used to determine the mean number of residents.

6 (D) Net cash per capita cost: Cash operating
7 expenses divided by the mean number of residents. It is
8 acceptable, but not required, to compute net cash per
9 capita for various levels of care, based on allocated
10 expenses and contributions from consolidated financial
11 statements. Allocation methods shall be subject to the
12 approval of the department, and schedules shall be
13 prepared for all levels of care, including any levels not
14 covered by continuing care contracts. For a continuing
15 care retirement community in its first year of operation
16 or following a major addition to an existing continuing
17 care retirement community, net cash per capita cost for
18 calculating reserve requirements may be the sum of the
19 figures determined by dividing fixed cash operating
20 expenses by the number of residents at the end of the
21 fiscal year, and dividing variable cash operating expenses
22 by the mean number of residents.

23 (2) Compute projected life cost:

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

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

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

36 (4) Compute projected life revenue:

37 (A) Annual fee: Multiply by 12 each monthly fee paid
38 by residents, including payments to be made by
39 third-party payers on behalf of the resident, including
40 SSI/SSP and Medi-Cal, and contributions, donations, or



1 endowments, that the provider actually used for
2 operating expenditures for continuing care contracts
3 during the fiscal year.

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

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

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

13 (5) Compute statutory reserve:

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

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

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

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

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

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

38 (2) Notes receivable by the continuing care
39 retirement community, that are secured by first deeds of



1 trust and first mortgages on property not owned by the
2 provider or its affiliates.

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

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

11 (B) Common stocks rated "above average" or higher
12 by any national rating agency. For example, a rating of
13 A+, A, or A— by Standard and Poor's Corporation is
14 required for common stock.

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

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

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

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

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

36 (5) Real estate used to provide care and housing for
37 holders of continuing care contracts, or real estate, or
38 equities therein, owned by the entity as an investment,
39 the rents from which are used to discharge obligations to
40 holders of continuing care contracts or to reinvest as a



1 part of the reserves. These investments may be located
2 outside the State of California.

3 (A) The value of this real estate shall be based on 70
4 percent of the net equity thereof, which shall be the book
5 value, assessed value, or current appraised value within
6 12 months prior to the end of the fiscal year, less all
7 encumbrances, depreciation, and the amount required
8 for reserves for refundable contracts under Section 1793,
9 all according to audited financial statements acceptable
10 to the department.

11 (B) All appraisals shall be prepared by either a
12 member of the American Institute of Appraisers or a
13 member of the Society of Real Estate Appraisers, or the
14 county assessor. The department may require technical
15 reports to be verified or certified, or both. The expense
16 of any technical reports or any verifications thereof shall
17 be borne by the provider.

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

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

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

32 (B) Qualified for sale in California.

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

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

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



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

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

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

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

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

21 1793. (a) Any provider offering a refundable
22 contract, or other entity assuming responsibility for
23 refundable contracts, shall maintain a refund reserve
24 fund in trust for the residents. This trust fund shall remain
25 intact to accumulate interest earnings resulting from
26 investments of liquid reserves in accordance with
27 paragraph (1) of subdivision (e) and subparagraphs (A)
28 through (E), inclusive, of paragraph (3) of subdivision
29 (e) of Section 1792.2. The amount of the refund reserve
30 shall be revised annually by the provider and submitted
31 to the department in conjunction with the annual report
32 required by Section 1790.

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



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

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

9 These investments in real estate shall be limited to 50
10 percent of the providers' net equity in the real estate. The
11 net equity shall be the book value, assessed value, or
12 current appraised value within 12 months prior to the end
13 of the fiscal year, less any depreciation, encumbrances,
14 and the amount required for statutory reserves under
15 Section 1792.2, all according to audited financial
16 statements acceptable to the department. This paragraph
17 shall apply to applications, *and for those phases of the*
18 *project that were identified as part of applications,*
19 submitted after May 31, 1995.

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

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

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

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



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

6 (C) For that resident, *use an interest rate of 6 percent*
7 *or lower* to determine from compound interest tables the
8 factor which represents the amount required today to
9 grow at compound interest to one dollar (\$1) at the end
10 of the period of the life expectancy of the resident.

11 (D) Multiply the refundable portion of the resident's
12 entry fee amount by the factor obtained in subparagraph
13 (C) to determine the amount of reserve required to be
14 maintained.

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

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

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

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

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

38 (c) Any provider which has executed refundable
39 contracts in a continuing care retirement community
40 prior to January 1, 1996, and which has not executed



1 refundable contracts in a continuing care retirement
2 community prior to January 1, 1991, shall submit, for the
3 department's approval, a method of determining a
4 refund reserve to be held in trust for the residents.
5 Approved methods include any of the following:

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

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

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

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

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

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

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

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

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

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

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

39 (8) Determine the factor for inflating the mean
40 entrance fee at the rate of 3 percent below the interest



1 rate on new 30-year treasury bonds, for each year from
2 the current date to the 40th year of operation, or until all
3 units have been turned over.

4 (9) Calculate the inflated mean entrance fees for the
5 40th year and for each preceding year, until all units have
6 been turned over.

7 (10) Multiply the inflated mean entrance fee for the
8 40th year, and each preceding year, as specified in
9 paragraph (9), by the annual turnover, as specified in
10 paragraph (6), until the total of the annual turnovers used
11 in the calculations equals the total number of units in the
12 continuing care retirement community.

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

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

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

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

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



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

6 (B) The “total fund balance of net worth,” or
7 equivalent amount, as reflected on Form 990 or Form
8 990-PF filed with the Internal Revenue Service.

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

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

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

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

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

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

33 1793.5. (a) Any entity that sells deposit subscriptions
34 proposing to promise to provide care without having a
35 current and valid permit to sell deposit subscriptions is
36 guilty of a misdemeanor.

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



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

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

14 (e) Each violation of subdivision (a), (b), (c), or (d)
15 is subject to a fine not to exceed ten thousand dollars
16 (\$10,000), or by imprisonment in the county jail for a
17 period not to exceed one year, or by both the fine and
18 imprisonment.

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

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

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

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

34 1793.6. (a) The department may issue citations
35 pursuant to this section containing orders of abatement
36 and assessing civil penalties against any entity who
37 violates Section 1771.2 or 1793.5.

38 (b) If upon inspection or investigation, the
39 department has probable cause to believe that an entity
40 is violating Section 1771.2 or 1793.5, the department may



1 issue a citation to that entity. Each citation shall be in
2 writing and shall describe with particularity the basis of
3 the citation. Each citation shall contain an order of
4 abatement. In addition to the administrative fines
5 pursuant to Section 1793.27, a provider in violation of the
6 abatement order shall be liable for an assessment of a civil
7 penalty in the amount of two hundred dollars (\$200) per
8 day for violation of the abatement order.

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

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

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

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

31 (g) If the entity cited under this section makes a timely
32 appeal of the citation, the department shall provide an
33 opportunity for a hearing. The department shall
34 thereafter issue a decision, based on findings of fact,
35 affirming, modifying, or vacating the citation or directing
36 other appropriate relief. The proceedings under this
37 section shall be conducted in accordance with the
38 provisions of Chapter 5 (commencing with Section
39 11500) of Part 1 of Division 3 of Title 2 of the Government



1 Code, and the department shall have all the powers
2 granted therein.

3 (h) After exhaustion of the review procedures
4 specified in this section, the department may apply to the
5 appropriate superior court for a judgment in the amount
6 of the civil penalty and an order compelling the cited
7 entity to comply with the order of abatement. The
8 application, which shall include a certified copy of the
9 final order of the department shall be served upon the
10 cited entity who shall have five business days within
11 which to file that entity’s response in writing in the
12 superior court, this period may be extended for good
13 cause. Failure on the part of the cited entity to so respond
14 shall constitute grounds for entry of a default judgment
15 against that entity. In the event a response is timely filed
16 in superior court, the action shall have priority for trial
17 over all other civil matters.

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

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

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

28 1793.7. A permit to sell deposit subscriptions, a
29 provisional certificate of authority, or a certificate of
30 authority shall be forfeited by operation of law when any
31 one of the following occurs:

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

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

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



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

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

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

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

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

15 1793.8. A Certificate of Authority shall be
16 automatically inactivated when a provider voluntarily
17 ceases to enter into continuing care contracts with new
18 residents. The provider shall continue to comply with all
19 provisions of this chapter until all continuing care
20 contractual obligations have been fulfilled.

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

23 1793.9. (a) Obligations pursuant to continuing care
24 contracts executed by a provider shall be deemed a
25 preferred claim against all assets owned by the provider
26 in the event of liquidation. However, this preferred claim
27 shall be subject to any perfected claims secured by
28 mortgage, deed of trust, pledge, deposit as security,
29 escrow, or otherwise secured.

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



1 the total refunds due and multiplying that percentage by
 2 the total funds available.

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

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

9 1793.11. (a) Any transfer of money or property,
 10 pursuant to a continuing care contract found by the
 11 department to be executed in violation of this chapter, is
 12 voidable at the option of the transferor for a period of 90
 13 days from the execution of the transfer.

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

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

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

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

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

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

38 1793.13. (a) In either of the following situations the
 39 department may require the provider to submit within 60
 40 days a financial plan detailing the method by which the



1 provider proposes to overcome the deficiencies noted by
2 the department.

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

5 (2) At any other time when the department has reason
6 to believe that the provider is insolvent, is in imminent
7 danger of becoming insolvent, is in a financially unsound
8 or unsafe condition, or that its condition is such that it may
9 otherwise be unable to fully perform its obligations
10 pursuant to continuing care contracts.

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

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

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

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

29 1793.15. (a) When necessary to secure the
30 performance of all obligations of the applicant or
31 provider to transferors, the department may record a
32 notice or notices of lien on behalf of the transferors. From
33 the date of recording, the lien shall attach to all real
34 property owned or acquired by the provider during the
35 pendency of the lien, provided such property is not
36 exempt from the execution of a lien and is located within
37 the county in which the lien is recorded. The lien shall
38 have the force, effect, and priority of a judgment lien.

39 (b) The department shall file a release of the lien if the
40 department deems the lien no longer necessary to secure



1 the performance of all obligations of the applicant or
2 provider to the transferors.

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

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

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

12 1793.17. (a) When necessary to secure the interests
13 of transferors, the department may require that the
14 applicant or provider reestablish an escrow account,
15 return previously released moneys to escrow, and escrow
16 all future entrance fee payments.

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

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

23 1793.19. The civil, criminal, and administrative
24 remedies available to the department pursuant to this
25 article are not exclusive and may be sought and employed
26 in any combination deemed advisable by the department
27 to enforce this chapter.

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

30 1793.21. The department, in its discretion, may
31 condition, suspend, or revoke any permit to sell deposit
32 subscriptions, provisional certificate of authority, or
33 certificate of authority issued under this chapter if it finds
34 any one or more of the following:

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

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



1 (c) Suspension or revocation of the license of the
2 provider pursuant to the licensing provisions of Chapter
3 2 (commencing with Section 1250) or Chapter 3.2
4 (commencing with Section 1569).

5 (d) Material misstatement, misrepresentation, or
6 fraud in obtaining the permit to sell deposit subscriptions,
7 provisional certificate of authority, or certificate of
8 authority.

9 (e) Demonstrated lack of fitness or trustworthiness.

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

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

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

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

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

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

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

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

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

35 (o) Violation of a condition on a certificate.

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

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



1 (r) Failure by the provider to fulfill its obligations
2 under continuing care contracts.

3 (s) Material misrepresentations to prospective
4 residents, or residents of, a continuing care retirement
5 community.

6 (t) Failure by the provider to submit proposed
7 changes to continuing care contracts prior to use, or
8 execution of a continuing care contract that has not been
9 previously approved by the department.

10 (u) Failure by the provider to diligently submit
11 materials required by the statute.

12 SEC. 60. Section 1793.23 of the Health and Safety
13 Code is amended to read:

14 1793.23. (a) The department shall consult with and
15 consider the recommendations of the Continuing Care
16 Contracts Committee prior to conditioning, suspending,
17 or revoking any permit to sell deposit subscriptions,
18 provisional certificate of authority, or certificate of
19 authority.

20 (b) The provider shall have a right of appeal to the
21 department. The proceedings shall be conducted in
22 accordance with Chapter 5 (commencing with Section
23 11500) of Part 1 of Division 3 of Title 2 of the Government
24 Code, and the department shall have all of the powers
25 granted therein. A suspension, condition, or revocation
26 shall remain in effect until completion of the proceedings
27 in favor of the provider. In all proceedings conducted in
28 accordance with this section, the standard of proof to be
29 applied shall be by a preponderance of the evidence.

30 (c) The department may, upon finding of changed
31 circumstances, remove a suspension or condition.

32 SEC. 61. Section 1793.25 of the Health and Safety
33 Code is amended to read:

34 1793.25. (a) During the period that the revocation or
35 suspension action is pending against the permit to sell
36 deposit subscriptions, provisional certificate of authority,
37 or certificate of authority, the provider shall not enter
38 into any new continuing care contracts or deposit
39 subscription agreements.



1 (b) The suspension or revocation by the department,
2 or voluntary return of the provisional certificate of
3 authority or certificate of authority by the provider, shall
4 not release the provider from obligations assumed at the
5 time the continuing care contracts were executed.

6 SEC. 62. Section 1793.27 of the Health and Safety
7 Code is amended to read:

8 1793.27. (a) If the department finds that one or more
9 grounds exist for the discretionary condition, revocation,
10 or suspension of a permit to sell deposit subscriptions,
11 provisional certificate of authority, or a certificate of
12 authority issued under this chapter, the department, in
13 lieu of the condition, revocation, or suspension, may
14 impose a administrative fine upon the provider in an
15 amount not to exceed one thousand dollars (\$1,000) per
16 violation.

17 (b) The administrative fine shall be deposited in the
18 Continuing Care Provider Fee Fund and shall be
19 disbursed for the specific purposes of offsetting the costs
20 of investigation and litigation and to compensate
21 court-appointed administrators when continuing care
22 retirement community assets are insufficient.

23 SEC. 63. Section 1793.29 of the Health and Safety
24 Code is amended to read:

25 1793.29. In the case of any violation or threatened
26 violation of this chapter, the department may institute a
27 proceeding or may request the Attorney General to
28 institute a proceeding to obtain injunctive or other
29 equitable relief in the superior court in and for the county
30 in which the violation occurs, or in which the principal
31 place of business of the provider is located. The
32 proceeding under this section shall conform with the
33 requirements of Chapter 3 (commencing with Section
34 525) of Title 7 of Part 2 of the Code of Civil Procedure,
35 except that no undertaking shall be required of the
36 department in any action commenced under this section,
37 nor shall the department be required to allege facts
38 necessary to show lack of adequate remedy at law, or to
39 show irreparable loss or damage.



1 SEC. 64. Section 1793.31 of the Health and Safety
2 Code is amended to read:

3 1793.31. (a) The district attorney of every county
4 may, upon application by the department or its
5 authorized representative, institute and conduct the
6 prosecution of any action for violation of this chapter
7 within his or her county.

8 (b) This chapter shall not limit or qualify the powers
9 of the district attorney to institute and conduct the
10 prosecution of any action brought for the violation within
11 his or her county of this chapter or any other provision of
12 law, including, but not limited to, actions for fraud or
13 misrepresentation.

14 (c) The department shall provide access to any
15 records in its control on request of a district attorney and
16 shall cooperate in any investigation by a district attorney.

17 SEC. 65. Section 1793.50 of the Health and Safety
18 Code is amended to read:

19 1793.50. (a) The department, after consultation with
20 the Continuing Care Contracts Committee, may petition
21 the superior court for an order appointing a qualified
22 administrator to operate a continuing care retirement
23 community, and thereby mitigate crisis situations
24 wherein elderly residents are left without means for their
25 support or moved without proper preparation, in any of
26 the following circumstances:

27 (1) The provider is insolvent or in imminent danger of
28 becoming insolvent.

29 (2) The provider is in a financially unsound or unsafe
30 condition.

31 (3) The provider has failed to establish or has
32 substantially depleted the reserves required by this
33 chapter.

34 (4) A plan, as specified in Section 1793.13, has not been
35 approved by the department or the provider has failed to
36 implement the plan approved by the department.

37 (5) The provider is unable to fully perform its
38 obligations pursuant to continuing care contracts.

39 (6) The residents are otherwise placed in serious
40 jeopardy.



1 (b) The administrator may only assume the operation
2 of the continuing care retirement community in order to
3 either rehabilitate the provider to enable it fully to
4 perform its continuing care contract obligations,
5 implement a plan of reorganization acceptable to the
6 department, facilitate the transition if another provider
7 assumes continuing care contract obligations, or facilitate
8 an orderly liquidation of the provider.

9 (c) With each petition, the department shall include
10 a request for a temporary restraining order to prevent the
11 provider from disposing of or transferring assets pending
12 the hearing on the petition.

13 (d) The provider shall be served with a copy of the
14 petition, together with an order to appear and show cause
15 why management and possession of the provider's
16 continuing care retirement community or assets should
17 not be vested in an administrator.

18 (e) The order to show cause shall specify a hearing
19 date, which shall be not less than five nor more than 10
20 days following service of the petition and order to show
21 cause on the provider.

22 (f) Petitions to appoint an administrator shall have
23 precedence over all matters, except criminal matters, in
24 the court.

25 (g) At the time of the hearing, the department shall
26 advise the provider and the court of the name of the
27 proposed administrator.

28 (h) If, at the conclusion of the hearing, including such
29 oral evidence as the court shall consider, the court finds
30 that any of the circumstances specified in subdivision (a)
31 exist, the court shall issue an order appointing an
32 administrator to take possession of the property of the
33 provider and to conduct the business thereof, enjoining
34 the provider from interfering with the administrator in
35 the conduct of the rehabilitation, and directing the
36 administrator to take steps toward removal of the causes
37 and conditions which have made rehabilitation
38 necessary, as the court may direct.

39 (i) The order shall include a provision directing the
40 issuance of a notice of the rehabilitation proceedings to



1 the residents at the continuing care retirement
2 community and to other interested persons as the court
3 shall direct.

4 (j) The court may permit the provider to participate
5 in the continued operation of the continuing care
6 retirement community during the pendency of any
7 appointments ordered pursuant to this section and shall
8 specify in the order the nature and scope of the
9 participation.

10 (k) The court shall retain jurisdiction throughout the
11 rehabilitation proceeding and may issue further orders as
12 it deems necessary to accomplish the rehabilitation or
13 orderly liquidation of the continuing care retirement
14 community in order to protect the residents of the
15 continuing care retirement community.

16 SEC. 66. Section 1793.52 of the Health and Safety
17 Code is amended to read:

18 1793.52. The court-appointed administrator shall
19 immediately notify the residents of that appointment and
20 of the status of the continuing care retirement
21 community management.

22 SEC. 67. Section 1793.54 of the Health and Safety
23 Code is amended to read:

24 1793.54. If an administrator is appointed to
25 rehabilitate a provider, the administrator may do any of
26 the following:

27 (a) Take possession of and preserve, protect and
28 recover any assets, books, records, or property of the
29 provider, including, but not limited to, claims or causes of
30 action belonging to, or which may be asserted by, the
31 provider.

32 (b) Deal with the property in the administrator's
33 name in the capacity as administrator, and purchase at
34 any sale any real estate or other asset upon which the
35 provider may hold any lien or encumbrance or in which
36 the provider may have an interest.

37 (c) File, prosecute, and defend or compromise any suit
38 or suits which have been filed, or which may thereafter
39 be filed, by or against the provider as necessary to protect



1 the provider or the residents or any property affected
2 thereby.

3 (d) Deposit and invest any of the provider's available
4 funds.

5 (e) Pay all expenses of the rehabilitation.

6 (f) Perform all duties of the provider in the provision
7 of care and services to residents in the continuing care
8 retirement community at the time the administrator
9 takes possession.

10 (g) Facilitate the orderly transfer of residents should
11 the provider ultimately fail.

12 (h) Exercise any other powers and duties as may be
13 authorized by law or provided by order of the court.

14 SEC. 68. Section 1793.56 of the Health and Safety
15 Code is amended to read:

16 1793.56. (a) Reasonable compensation shall be paid
17 to the administrator appointed.

18 (b) Costs for the compensation shall be levied against
19 the assets of the provider. When facility assets are
20 insufficient, the department, in its discretion, may
21 compensate the administrator from funds available from
22 the Continuing Care Provider Fee Fund.

23 (c) Any individual appointed administrator, pursuant
24 to Section 1793.50, shall be held harmless for any
25 negligence in the performance of his or her duties and
26 shall be indemnified by the provider for costs of
27 defending actions brought against him or her in his or her
28 capacity as administrator.

29 SEC. 69. Section 1793.58 of the Health and Safety
30 Code is amended to read:

31 1793.58. (a) The department, administrator, or any
32 interested person, upon due notice to the administrator,
33 at any time, may apply to the court for an order
34 terminating the rehabilitation proceedings and
35 permitting the provider to resume possession of the
36 provider's property and the conduct of the provider's
37 business.

38 (b) No order shall be granted pursuant to subdivision
39 (a) except when, after a full hearing, the court has
40 determined that the purposes of the proceeding have



1 been fully and successfully accomplished and that the
2 continuing care retirement community can be returned
3 to the provider's management without further jeopardy
4 to the residents of the continuing care retirement
5 community, creditors, owners of the continuing care
6 retirement community, and to the public.

7 (c) An order terminating the rehabilitation
8 proceeding shall be based upon a full report and
9 accounting by the administrator of the conduct of the
10 provider's officers, employees, and business during the
11 rehabilitation and of the provider's current financial
12 condition.

13 (d) Upon issuance of an order terminating the
14 rehabilitation, the department shall reinstate the
15 provisional or final certificate of authority and may
16 condition, suspend, or revoke the reinstated certificate
17 only upon a change in the conditions at the time of the
18 order or a determination of facts which, if such facts had
19 been known at the time of the order, the court would not
20 have entered the order as determined by the
21 department.

22 SEC. 70. Section 1793.60 of the Health and Safety
23 Code is amended to read:

24 1793.60. (a) If at any time the department
25 determines that further efforts to rehabilitate the
26 provider would not be in the best interest of the residents
27 or prospective residents, or would not be economically
28 feasible, the director may, with the approval of the
29 Continuing Care Contracts Committee, apply to the
30 court for an order of liquidation and dissolution or may
31 apply for other appropriate relief for dissolving the
32 property and bringing to conclusion its business affairs.

33 (b) Upon issuance of an order directing the liquidation
34 or dissolution of the provider, the department shall
35 revoke the provider's provisional or final certificate of
36 authority.

37 SEC. 71. Section 1793.62 of the Health and Safety
38 Code is amended to read:

39 1793.62. (a) The department, administrator, or any
40 interested person, upon due notice to the parties, may



1 petition the court for an order terminating the
2 rehabilitation proceedings when the rehabilitation
3 efforts have not been successful, the continuing care
4 retirement community has been sold at foreclosure sale,
5 the provider has been declared bankrupt, or the provider
6 has otherwise been shown to be unable to perform its
7 obligations under the continuing care contracts.

8 (b) No order shall be granted unless all of the following
9 have occurred:

10 (1) There has been a full hearing and the court has
11 determined that the provider is unable to perform its
12 contractual obligations.

13 (2) The administrator has given the court a full and
14 complete report and financial accounting signed by the
15 administrator as being a full and complete report and
16 accounting.

17 (3) The court has determined that the residents of the
18 continuing care retirement community have been
19 protected to the extent possible and has made such orders
20 in this regard as the court deems proper.

21 SEC. 72. No reimbursement is required by this act
22 pursuant to Section 6 of Article XIII B of the California
23 Constitution because the only costs that may be incurred
24 by a local agency or school district will be incurred
25 because this act creates a new crime or infraction,
26 eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section
28 17556 of the Government Code, or changes the definition
29 of a crime within the meaning of Section 6 of Article
30 XIII B of the California Constitution.

31 Notwithstanding Section 17580 of the Government
32 Code, unless otherwise specified, the provisions of this act
33 shall become operative on the same date that the act
34 takes effect pursuant to the California Constitution.



- 1 _____
- 2 **CORRECTIONS**
- 3 **Text — Pages 22, 26, 43, 55, 58, 61, and 74.**
- 4 _____
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