

AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 407

Introduced by Assembly ~~Member Beall~~ Members *Beall and Eng*
(Coauthors: Assembly Members *Portantino, Price, and Torlakson*)
(Coauthor: Senator DeSaulnier)

February 23, 2009

An act to amend Sections 1771 and 1788 of, and to add Article 9 (commencing with Section 1793.80) to Chapter 10 of Division 2 of, the Health and Safety Code, relating to continuing care retirement communities.

LEGISLATIVE COUNSEL'S DIGEST

AB 407, as amended, Beall. Continuing care contracts: retirement communities: closure.

Existing law contains provisions relating to supervision of continuing care contracts, including requirements governing continuing care communities and contracts. Existing law requires the State Department of Social Services to regulate activity relating to continuing care contracts, and requires that continuing care retirement communities maintain an environment that enhances residents' independence and self-determination and in that regard imposes various requirements on a care provider. Existing law defines various terms for purposes of those contracts and requirements, and imposes specified civil and criminal penalties for violations of those provisions.

This bill would define the term “permanent closure” for purposes of those provisions, to mean prescribed events that will cause the relocation of residents.

This bill would impose various requirements on a provider with respect to the permanent closure of a continuing care retirement community facility, or a portion thereof, as specified, including providing 120 days’ written notice to the department, and affected residents or designated representatives of these residents of the intended date of closure of a facility. The bill would require a provider, no less than 90 days prior to the permanent closure of a continuing care retirement community facility, or a portion thereof, to provide the department, affected residents and their representatives, and the local long-term care ombudsman program, with a written closure and relocation plan for the facility, containing specified information. The bill would require the department to monitor the implementation of the closure and relocation plan, as necessary, to ensure full compliance by the provider, and would prohibit a provider from taking any action to relocate a resident or to close the facility, until the plan has been prepared and submitted to the department by the provider and provided to the affected residents of the facility, the affected residents’ designated representatives, and the local long-term care ombudsman program. The bill would also require the provider, in the case of a permanent closure, to offer the resident the choice of replacement housing, monetary compensation equal to the remaining value of the contract, or an alternative arrangement mutually agreed upon by the provider and the resident. Because this bill would change the definition of a crime, it would impose a state-mandated local program.

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

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

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

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

- 1 SECTION 1. Section 1771 of the Health and Safety Code is
- 2 amended to read:

1 1771. Unless the context otherwise requires, the definitions in
2 this section govern the interpretation of this chapter.

3 (a) (1) “Affiliate” means any person, corporation, limited
4 liability company, business trust, trust, partnership, unincorporated
5 association, or other legal entity that directly or indirectly controls,
6 is controlled by, or is under common control with, a provider or
7 applicant.

8 (2) “Affinity group” means a grouping of entities sharing a
9 common interest, philosophy, or connection (e.g., military officers,
10 religion).

11 (3) “Annual report” means the report each provider is required
12 to file annually with the department, as described in Section 1790.

13 (4) “Applicant” means any entity, or combination of entities,
14 that submits and has pending an application to the department for
15 a permit to accept deposits and a certificate of authority.

16 (5) “Assisted living services” includes, but is not limited to,
17 assistance with personal activities of daily living, including
18 dressing, feeding, toileting, bathing, grooming, mobility, and
19 associated tasks, to help provide for and maintain physical and
20 psychosocial comfort.

21 (6) “Assisted living unit” means the living area or unit within
22 a continuing care retirement community that is specifically
23 designed to provide ongoing assisted living services.

24 (7) “Audited financial statement” means financial statements
25 prepared in accordance with generally accepted accounting
26 principles including the opinion of an independent certified public
27 accountant, and notes to the financial statements considered
28 customary or necessary to provide full disclosure and complete
29 information regarding the provider’s financial statements, financial
30 condition, and operation.

31 (b) (reserved)

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

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

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

1 (4) “Cash equivalent” means certificates of deposit and United
2 States Treasury securities with a maturity of five years or less.

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

8 (6) “Condition” means a restriction, specific action, or other
9 requirement imposed by the department for the initial or continuing
10 validity of a permit to accept deposits, a provisional certificate of
11 authority, or a certificate of authority. A condition may limit the
12 circumstances under which the provider may enter into any new
13 deposit agreement or contract, or may be imposed as a condition
14 precedent to the issuance of a permit to accept deposits, a
15 provisional certificate of authority, or a certificate of authority.

16 (7) “Consideration” means some right, interest, profit, or benefit
17 paid, transferred, promised, or provided by one party to another
18 as an inducement to contract. Consideration includes some
19 forbearance, detriment, loss, or responsibility, that is given,
20 suffered, or undertaken by a party as an inducement to another
21 party to contract.

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

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

29 (10) “Continuing care promise” means a promise, expressed or
30 implied, by a provider to provide one or more elements of care to
31 an elderly resident for the duration of his or her life or for a term
32 in excess of one year. Any such promise or representation, whether
33 part of a continuing care contract, other agreement, or series of
34 agreements, or contained in any advertisement, brochure, or other
35 material, either written or oral, is a continuing care promise.

36 (11) “Continuing care retirement community” means a facility
37 located within the State of California where services promised in
38 a continuing care contract are provided. A distinct phase of
39 development approved by the department may be considered to
40 be the continuing care retirement community when a project is

1 being developed in successive distinct phases over a period of
2 time. When the services are provided in residents' own homes, the
3 homes into which the provider takes those services are considered
4 part of the continuing care retirement community.

5 (12) "Control" means directing or causing the direction of the
6 financial management or the policies of another entity, including
7 an operator of a continuing care retirement community, whether
8 by means of the controlling entity's ownership interest, contract,
9 or any other involvement. A parent entity or sole member of an
10 entity controls a subsidiary entity provider for a continuing care
11 retirement community if its officers, directors, or agents directly
12 participate in the management of the subsidiary entity or in the
13 initiation or approval of policies that affect the continuing care
14 retirement community's operations, including, but not limited to,
15 approving budgets or the administrator for a continuing care
16 retirement community.

17 (d) (1) "Department" means the State Department of Social
18 Services.

19 (2) "Deposit" means any transfer of consideration, including a
20 promise to transfer money or property, made by a depositor to any
21 entity that promises or proposes to promise to provide continuing
22 care, but is not authorized to enter into a continuing care contract
23 with the potential depositor.

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

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

32 (5) "Depositor" means any prospective resident who pays a
33 deposit. Where any portion of the consideration transferred to an
34 applicant as a deposit or to a provider as consideration for a
35 continuing care contract is transferred by a person other than the
36 prospective resident or a resident, that third-party transferor shall
37 have the same cancellation or refund rights as the prospective
38 resident or resident for whose benefit the consideration was
39 transferred.

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

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

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

7 (3) “Entrance fee” means the sum of any initial, amortized, or
8 deferred transfer of consideration made or promised to be made
9 by, or on behalf of, a person entering into a continuing care contract
10 for the purpose of ensuring care or related services pursuant to that
11 continuing care contract or as full or partial payment for the
12 promise to provide care for the term of the continuing care contract.
13 Entrance fee includes the purchase price of a condominium,
14 cooperative, or other interest sold in connection with a promise of
15 continuing care. An initial, amortized, or deferred transfer of
16 consideration that is greater in value than 12 times the monthly
17 care fee shall be presumed to be an entrance fee.

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

20 (5) “Equity interest” means an interest held by a resident in a
21 continuing care retirement community that consists of either an
22 ownership interest in any part of the continuing care retirement
23 community property or a transferable membership that entitles the
24 holder to reside at the continuing care retirement community.

25 (6) “Equity project” means a continuing care retirement
26 community where residents receive an equity interest in the
27 continuing care retirement community property.

28 (7) “Equity securities” shall refer generally to large and
29 midcapitalization corporate stocks that are publicly traded and
30 readily liquidated for cash, and shall include shares in mutual funds
31 that hold portfolios consisting predominantly of these stocks and
32 other qualifying assets, as defined by Section 1792.2. Equity
33 securities shall also include other similar securities that are
34 specifically approved by the department.

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

39 (f) “Facility” means any place or accommodation where a
40 provider provides or will provide a resident with care or related

1 services, whether or not the place or accommodation is constructed,
2 owned, leased, rented, or otherwise contracted for by the provider.

3 (g) (reserved)

4 (h) (reserved)

5 (i) (1) "Inactive certificate of authority" means a certificate that
6 has been terminated under Section 1793.8.

7 (2) "Investment securities" means any of the following:

8 (A) Direct obligations of the United States, including obligations
9 issued or held in book-entry form on the books of the United States
10 Department of the Treasury or obligations the timely payment of
11 the principal of, and the interest on, which are fully guaranteed by
12 the United States.

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

15 (i) The Federal Home Loan Bank System.

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

17 (iii) The Federal Financing Bank.

18 (iv) The Government National Mortgage Association.

19 (v) The Farmer's Home Administration.

20 (vi) The Federal Home Loan Mortgage Corporation of the
21 Federal Housing Administration.

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

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

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

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

38 (F) Long-term investment agreements, which have maturity
39 dates in excess of one year, with financial institutions, including,
40 but not limited to, banks and insurance companies or their affiliates,

1 if the financial institution's paying ability for debt obligations or
2 long-term claims or the paying ability of a related guarantor of the
3 financial institution for these obligations or claims, is rated in one
4 of the two highest rating categories of each rating agency rating
5 those instruments, or if the short-term investment agreements are
6 with the financial institution or the related guarantor of the financial
7 institution, the long-term or short-term debt obligations, whichever
8 is applicable, of which are rated in one of the two highest long-term
9 or short-term rating categories, of each rating agency rating the
10 bonds of the financial institution or the related guarantor, provided
11 that if the rating falls below the two highest rating categories, the
12 investment agreement shall allow the provider the option to replace
13 the financial institution or the related guarantor of the financial
14 institution or shall provide for the investment securities to be fully
15 collateralized by investments described in subparagraph (A), and,
16 provided further, if so collateralized, that the provider has a
17 perfected first security lien on the collateral, as evidenced by an
18 opinion of counsel and the collateral is held by the provider.

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

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

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

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

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

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

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

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

9 (j) (reserved)

10 (k) (reserved)

11 (l) “Life care contract” means a continuing care contract that
12 includes a promise, expressed or implied, by a provider to provide
13 or pay for routine services at all levels of care, including acute
14 care and the services of physicians and surgeons, to the extent not
15 covered by other public or private insurance benefits, to a resident
16 for the duration of his or her life. Care shall be provided under a
17 life care contract in a continuing care retirement community having
18 a comprehensive continuum of care, including a skilled nursing
19 facility, under the ownership and supervision of the provider on
20 or adjacent to the premises. No change may be made in the monthly
21 fee based on level of care. A life care contract shall also include
22 provisions to subsidize residents who become financially unable
23 to pay their monthly care fees.

24 (m) (1) “Monthly care fee” means the fee charged to a resident
25 in a continuing care contract on a monthly or other periodic basis
26 for current accommodations and services including care, board,
27 or lodging. Periodic entrance fee payments or other prepayments
28 shall not be monthly care fees.

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

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

34 (o) (reserved)

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

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

1 (3) “Permanent closure” means ~~any of the following that will~~
2 ~~result in the relocation of residents, except in the case of a natural~~
3 ~~disaster or other act of God that is out of the provider’s control:~~

4 (A) ~~The voluntary or involuntary termination, including, but~~
5 ~~not limited to, forfeiture under Section 1793.7, of a provider’s~~
6 ~~certificate of authority or license.~~

7 (B) ~~Permanent closure of one or more residential living units,~~
8 ~~assisted living units, skilled nursing units, wings, floors, or~~
9 ~~buildings due to change of use or major repairs or renovations that~~
10 ~~result in the relocation of one or more residents without the~~
11 ~~possibility of return to the same units, wings, floors, or buildings.~~
12 ~~*the voluntary or involuntary termination or forfeiture, as specified*~~
13 ~~*in subdivisions (a), (b), (g), (h), and (i) of Section 1793.7, of a*~~
14 ~~*provider’s certificate of authority or license, or another action*~~
15 ~~*that results in the permanent relocation of residents. Permanent*~~
16 ~~*closure does not apply in the case of a natural disaster or other*~~
17 ~~*event out of the provider’s control.*~~

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

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

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

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

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

36 (9) “Proposes” means a representation that an applicant or
37 provider will or intends to make a future promise to provide care,
38 including a promise that is subject to a condition, such as the
39 construction of a continuing care retirement community or the
40 acquisition of a certificate of authority.

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

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

15 (q) (reserved)

16 (r) (1) "Refund reserve" means the reserve a provider is required
17 to maintain, as provided in Section 1792.6.

18 (2) "Refundable contract" means a continuing care contract that
19 includes a promise, expressed or implied, by the provider to pay
20 an entrance fee refund or to repurchase the transferor's unit,
21 membership, stock, or other interest in the continuing care
22 retirement community when the promise to refund some or all of
23 the initial entrance fee extends beyond the resident's sixth year of
24 residency. Providers that enter into refundable contracts shall be
25 subject to the refund reserve requirements of Section 1792.6. A
26 continuing care contract that includes a promise to repay all or a
27 portion of an entrance fee that is conditioned upon reoccupancy
28 or resale of the unit previously occupied by the resident shall not
29 be considered a refundable contract for purposes of the refund
30 reserve requirements of Section 1792.6, provided that this
31 conditional promise of repayment is not referred to by the applicant
32 or provider as a "refund."

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

35 (4) "Reservation fee" refers to consideration collected by an
36 entity that has made a continuing care promise or is proposing to
37 make this promise and has complied with Section 1771.4.

38 (5) "Resident" means a person who enters into a continuing
39 care contract with a provider, or who is designated in a continuing

1 care contract to be a person being provided or to be provided
2 services, including care, board, or lodging.

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

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

8 (s) (reserved)

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

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

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

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

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

30 (1) The legal name and address of each provider.

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

33 (3) The resident’s name and the identity of the unit the resident
34 will occupy.

35 (4) If there is a transferor other than the resident, the transferor
36 shall be a party to the contract and the transferor’s name and
37 address shall be specified.

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

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

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

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

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

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

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

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

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

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

26 (F) Assisted living services.

27 (G) Assistance with taking medications.

28 (H) Central storing and distribution of medications.

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

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

35 (10) The procedures and conditions under which a resident may
36 be voluntarily and involuntarily transferred from a designated
37 living unit. The transfer procedures, at a minimum, shall include
38 provisions addressing all of the following circumstances under
39 which a transfer may be authorized:

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

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

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

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

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

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

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

38 (ii) Prior to sending a formal notification of transfer, the provider
39 shall conduct a care conference with the resident and the resident’s
40 responsible person, and upon the resident’s or responsible person’s

1 request, family members, and the resident's health care
2 professionals, to explain the reasons for transfer.

3 (iii) Notify the resident and the resident's responsible person
4 the reasons for the transfer in writing.

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

9 (v) The notice of transfer shall be made at least 30 days before
10 the transfer is expected to occur, except when the health or safety
11 of the resident or other residents is in danger, or the transfer is
12 required by the resident's urgent medical needs. Under those
13 circumstances, the written notice shall be made as soon as
14 practicable before the transfer.

15 (vi) The written notice shall contain the reasons for the transfer,
16 the effective date, the designated level of care or location to which
17 the resident will be transferred, a statement of the resident's right
18 to a review of the transfer decision at a care conference, as provided
19 for in subparagraph (C), and for disputed transfer decisions, the
20 right to review by the Continuing Care Contracts Branch of the
21 State Department of Social Services, as provided for in
22 subparagraph (D). The notice shall also contain the name, address,
23 and telephone number of the department's Continuing Care
24 Contracts Branch.

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

28 (C) The resident has the right to review the transfer decision at
29 a subsequent care conference that shall include the resident, the
30 resident's responsible person, and upon the resident's or
31 responsible person's request, family members, the resident's
32 physician or other appropriate health care professional, and
33 members of the provider's interdisciplinary team. The local
34 ombudsperson may also be included in the care conference, upon
35 the request of the resident, the resident's responsible person, or
36 the provider.

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

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

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

(11) Provisions describing any changes in the resident's monthly fee and any changes in the entrance fee refund payable to the resident that will occur if the resident transfers from any unit.

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

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

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

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

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

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

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

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

(17) The amount of the entrance fee.

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

5 (19) The amount of any processing fee.

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

7 (21) For continuing care contracts that require a monthly care
8 fee or other periodic payment, the continuing care contract shall
9 include the following:

10 (A) A statement that the occupancy and use of the
11 accommodations by the resident is contingent upon the regular
12 payment of the fee.

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

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

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

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

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

31 (22) All continuing care contracts that include monthly care
32 fees shall address changes in monthly care fees by including either
33 of the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"NOTICE"

(date)

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

(35) The provider may not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect, and shall include the following statement in the contract: "Nothing in this continuing care contract limits either the provider's obligation to provide adequate care and supervision for the resident or any liability on the part of the provider which may result from the provider's failure to provide this care and supervision."

(36) Provisions describing how the provider will proceed in the event of a closure, including an explanation of how the provider will comply with Sections 1793.80, 1793.81, 1793.82, ~~1793.83,~~ and ~~1793.84.~~ and 1793.83.

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

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

3 (2) Care will be provided for the duration of the resident's life
4 unless the life care contract is canceled or terminated by the
5 provider during the cancellation period or after the cancellation
6 period for good cause.

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

11 (4) Monthly care fees will not be changed based on the resident's
12 level of care or service.

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

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

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

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

26 (B) The provider's decision shall be final and conclusive
27 regarding any adjustments to be made or any action to be taken
28 regarding any charitable consideration extended to any of its
29 residents.

30 (C) The provider is entitled to payment for the actual costs of
31 care out of any property acquired by the resident subsequent to
32 any adjustment extended to the resident under paragraph (1), or
33 from any other property of the resident that the resident failed to
34 disclose.

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

38 (E) The provider may receive an assignment from the resident
39 of the right to apply for and to receive the benefits, for and on
40 behalf of the resident.

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

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

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

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

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

20 (5) Protect the provider's ability to waive a resident's breach
21 of the terms or provisions of the continuing care contract in specific
22 instances without relinquishing its right to insist upon full
23 compliance by the resident with all terms or provisions in the
24 contract.

25 (6) Provide that the resident shall reimburse the provider for
26 any uninsured loss or damage to the resident's unit, beyond normal
27 wear and tear, resulting from the resident's carelessness or
28 negligence.

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

34 (8) Provide for the subrogation to the provider of the resident's
35 rights in the case of injury to a resident caused by the acts or
36 omissions of a third party, or for the assignment of the resident's
37 recovery or benefits in this case to the provider, to the extent of
38 the value of the goods and services furnished by the provider to
39 or on behalf of the resident as a result of the injury.

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

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

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

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

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

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

15 (e) A copy of the current audited financial statement of the
16 provider shall be attached to every continuing care contract. For
17 a provider whose current audited financial statement does not
18 accurately reflect the financial ability of the provider to fulfill the
19 continuing care contract obligations, the financial statement
20 attached to the continuing care contract shall include all of the
21 following:

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

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

28 (3) A copy of the approved financial plan for meeting the reserve
29 requirements.

30 (4) Any other supplemental statements or attachments necessary
31 to accurately represent the provider's financial ability to fulfill its
32 continuing care contract obligations.

33 (f) A schedule of the average monthly care fees charged to
34 residents for each type of residential living unit for each of the five
35 years preceding execution of the continuing care contract shall be
36 attached to every continuing care contract. The provider shall
37 update this schedule annually at the end of each fiscal year. If the
38 continuing care retirement community has not been in existence
39 for five years, the information shall be provided for each of the

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

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

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

11
12 "NOTICE OF CANCELLATION" (date)
13 Your first date of occupancy under this contract
14 is: _____

15
16 "You may cancel this transaction, without any penalty within
17 90 calendar days from the above date.

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

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

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

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

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

39
40 to _____

1 (Name of provider)
2 at _____
3 (Address of provider's place of business)
4 not later than midnight of _____ (date).
5 I hereby cancel this
6 transaction _____
7 (Resident or
8 Transferor's signature)"
9

10 SEC. 3. Article 9 (commencing with Section 1793.80) is added
11 to Chapter 10 of Division 2 of the Health and Safety Code, to read:
12

13 Article 9. Continuing Care Retirement Community Closures
14

15 1793.80. (a) Notwithstanding any other provisions of law, a
16 provider regulated under this chapter shall, no less than 120 days
17 prior to the intended date of the permanent closure of a continuing
18 care retirement community facility, as defined in paragraph (3) of
19 subdivision (p) of Section 1771, provide written notice to the
20 department and to the affected residents and their designated
21 representatives. The notice shall contain the following statement
22 of residents' rights under this article, in no less than 12-point type:
23

24 "This facility is planned for permanent closure on or after
25 [state date of ~~closure~~ closure] that will require you to vacate
26 your living unit. Residents of continuing care retirement
27 communities in California have certain rights and continuing
28 care community providers have certain responsibilities when
29 a continuing care community closes. Those rights include, but
30 are not limited to, the following:

31 1. Prior to closing, the provider shall provide a permanent
32 closure plan to the Continuing Care Contracts Branch of the
33 State Department of Social Services ~~which~~ that describes the
34 options available to residents for relocating to another part of
35 the facility, or another facility or the compensation to be
36 provided to residents.
37

38
39 2. No action can be taken to relocate any resident or to close
40 the facility until the permanent closure and relocation plan has

1 been prepared and provided to the department, the affected
2 residents of the facility and their designated representatives,
3 and to the local long-term care ombudsman program.”
4

5 (b) Upon service of the closure notice when closure is planned
6 for all units in a facility, the provider is prohibited from accepting
7 new residents or entering into new continuing care contracts at the
8 facility being closed.

9 1793.81. No less than 90 days prior to the permanent closure
10 of the continuing care retirement community facility, as defined
11 in paragraph (3) of subdivision (p) of Section 1771, the provider
12 shall provide to the department, the affected residents of the facility
13 and their designated representatives, and to the local long-term
14 care ombudsman program, a written closure and relocation plan.
15 The plan shall contain all of the following information:

16 (a) The number of affected residents at each level of care in the
17 continuing care retirement community facility.

18 (b) Assessment of unique service and care needs, if applicable,
19 for all of the following:

20 (1) Affected residents in skilled nursing and special care.

21 (2) Affected residents in assisted living units.

22 (3) Affected residents in the residential living units who require
23 assistance with three or more activities of daily living, and other
24 residents upon request.

25 (c) An explanation on how comparable care, if applicable, and
26 comparable replacement housing will be provided.

27 (d) A detailed description of the services the provider will
28 provide to residents to assist them in relocating, including, but not
29 limited to, reasonable costs of moving, storage, if applicable, and
30 transportation that shall be arranged by the provider in consultation
31 with the resident and his or her designated representative, and paid
32 for directly by the provider.

33 (e) The names and addresses of other continuing care retirement
34 communities operated by the provider and whether there are
35 openings available to the residents.

36 (f) The names and addresses of other continuing care retirement
37 communities within 30 miles of the closing continuing care
38 retirement community facility that provide comparable replacement
39 housing and care, if applicable, to those offered at the facility that

1 is scheduled for closure, and whether the facilities have immediate
2 openings available to residents of the closing facility.

3 (g) A description of how the facility will comply with the
4 requirements of Section 1793.82. The plan shall describe or identify
5 the replacement facility or facilities and the procedure by which
6 a resident can select a replacement facility. In no case shall the
7 plan for replacement housing require a resident to pay more than
8 he or she is presently paying for comparable housing and care,
9 other than normal rate increases. Any proposed monetary
10 compensation shall be fair and reasonable and shall represent the
11 estimated cost to the resident of securing comparable replacement
12 housing and care under terms similar to the contract between
13 resident and provider.

14 (h) A statement regarding the availability of a licensed medical
15 or geriatric professional to advise the resident, the resident's
16 representative, and the provider regarding the transfer of the
17 resident. Upon request by the resident or the resident's
18 representative, the provider shall make available the services of a
19 licensed medical or geriatric professional to advise the resident,
20 the resident's representative, and the provider regarding the transfer
21 of the resident. The provider may place a reasonable limit on the
22 cost of the services of the medical or geriatric professional.

23 1793.82. (a) In the case of a permanent closure, the provider
24 shall offer the resident the choice of the following four options,
25 the terms of which shall not be less than the terms of the continuing
26 care contract entered into between the resident and the provider
27 as if that contract had been fully performed:

28 (1) Relocation to another continuing care facility owned or
29 operated by the provider, if available.

30 (2) Relocation to a continuing care facility that is not owned by
31 the provider.

32 (3) Monetary compensation equal to the value of the remainder
33 of the contract as if the contract had been fully performed.

34 (4) An alternative arrangement that is mutually agreed upon by
35 the provider and the resident or his or her representative.

36 (b) Replacement housing offered pursuant to paragraph (1) or
37 (2) of subdivision (a) shall be housing that is, overall, comparable
38 in cost, size, services, features, and amenities to the unit being
39 vacated. If the resident chooses either of the replacement housing
40 options in paragraph (1) or (2) of subdivision (a), the provider shall

1 provide the reasonable costs of moving, storage, if applicable, and
2 transportation.

3 (c) Notwithstanding subdivision (a), for a resident under a life
4 care contract, the provider shall secure replacement housing and
5 care at a comparable facility for the resident at no additional cost
6 to the resident. The replacement housing and care shall comply
7 with subdivision (l) of Section 1771 and subdivision (b) of Section
8 1788.

9 (d) The provider may provide relocation pursuant to paragraph
10 (2) of subdivision (a) on a month-to-month basis, provided that
11 the terms are otherwise consistent with subdivision (a). After 120
12 days, a resident selecting a facility not owned by the provider may
13 not seek monetary compensation pursuant to paragraph (3) of
14 subdivision (a).

15 1793.83. (a) When there is a permanent closure, as defined in
16 paragraph (3) of subdivision (p) of Section 1771, within 30 days
17 of submitting the relocation plan to the department, the provider
18 shall fund a reserve, set up a trust fund, or secure a performance
19 bond to ensure the fulfillment of the obligations and commitments
20 associated with the relocation plan. The amount of the reserve trust
21 fund or performance bond shall be equal to or greater than the
22 estimated costs of relocating residents and the costs associated
23 with the relocation options pursuant to Section 1793.81 and
24 subdivision (a) of Section 1793.82.

25 (b) The reserve, trust fund, or performance bond shall be funded
26 with qualifying assets enumerated in paragraphs (1) to (5),
27 inclusive, of subdivision (a) of Section 1792.2 and shall not be
28 subject to any liens, judgments, garnishments, or creditor's claims.

29 1793.84. (a) The provider shall submit monthly progress
30 reports to the department detailing the progress and problems
31 associated with the permanent closure, as defined in paragraph (3)
32 of subdivision (p) of Section 1771, until all affected residents are
33 relocated and all required payments to, or on behalf of, affected
34 residents are made.

35 (b) The department shall monitor the implementation of the
36 closure as defined in either paragraph (6) of subdivision (c) or
37 paragraph (1) of subdivision (t), of Section 1771, whichever is
38 applicable, and relocation plan as necessary to ensure full
39 compliance by the provider. If the department determines that a
40 provider is closing a facility in violation of this article or is doing

1 so in a manner that endangers the health or safety of residents, it
2 shall exercise its powers under Article 7 (commencing with Section
3 1793.5).

4 (c) No action shall be taken by the provider to relocate any
5 resident or to close the facility until the relocation plan required
6 by Section 1793.81 has been prepared and provided to the
7 department, the affected residents of the facility and their
8 designated representatives, and to the local long-term ombudsman
9 program.

10 SEC. 4. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.