

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1044

Introduced by Assembly Member Jones

February 27, 2009

An act to amend Sections 1770, 1771, 1771.7, 1776.3, 1777.2, and 1788 of, ~~and to add Section 1770.5 to, and to repeal and add Section 1778 of,~~ the Health and Safety Code, relating to continuing care retirement communities, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1044, as amended, Jones. Continuing care retirement communities: contracts.

~~Under~~

(1) *Under* existing law, the State Department of Social Services is responsible for regulating activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the resident's life or a term in excess of one year.

This bill would transfer that responsibility, *except with respect to oversight and regulation of programs and services provided directly to residents of the communities*, to the Department of Insurance and would make related conforming changes.

(2) *Existing law establishes the Continuing Care Provider Fee Fund, which is continuously appropriated to the State Department of Social Services for purposes of administering the continuing care retirement community requirements of existing law.*

This bill would, for purposes of administering the above provisions, create 2 accounts within the fund, the Insurance Account, which would be continuously appropriated to the Department of Insurance, and the State Department of Social Services Account, which would be continuously appropriated to the State Department of Social Services. Ninety-five percent of fees collected pursuant to the above-described provisions would be deposited into the Insurance Account and 5% into the State Department of Social Services Account.

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

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

1 SECTION 1. The Legislature hereby finds and declares the
2 following:

3 (a) California is home to nearly four million people over 65
4 years of age; the largest older adult population in the nation. This
5 number is expected to more than double over the next several
6 decades as the baby boomers begin reaching this milestone.

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

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

18 (d) The Legislature has recognized the importance of continuing
19 care provider solvency and the need for disclosure concerning the
20 terms of agreements made between prospective residents and the
21 continuing care provider, and concerning the operations of the
22 continuing care retirement community.

23 (e) The Legislature defines continuing care contracts in terms
24 of a promise of the future provision of services which are analogous
25 to insurance products.

26 (f) Continuing care retirement communities have long-term
27 obligations and may have a corporate or capital structure similar

1 to insurance holding company systems, as defined in the Insurance
2 Code.

3 (g) Therefore, it is the intent of the Legislature to transfer
4 *general* regulatory responsibility for continuing care retirement
5 communities, *except for oversight and regulation of programs and*
6 *services provided directly to residents of the communities*, from
7 the Department of Social Services to the Department of Insurance.

8 SEC. 2. Section 1770 of the Health and Safety Code is amended
9 to read:

10 1770. The Legislature finds, declares, and intends all of the
11 following:

12 (a) Continuing care retirement communities are an alternative
13 for the long-term residential, social, and health care needs of
14 California's elderly residents and seek to provide a continuum of
15 care, minimize transfer trauma, and allow services to be provided
16 in an appropriately licensed setting.

17 (b) Because elderly residents often both expend a significant
18 portion of their savings in order to purchase care in a continuing
19 care retirement community and expect to receive care at their
20 continuing care retirement community for the rest of their lives,
21 tragic consequences can result if a continuing care provider
22 becomes insolvent or unable to provide responsible care.

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

27 (d) Providers of continuing care should be required to obtain a
28 certificate of authority to enter into continuing care contracts and
29 should be monitored and regulated by the Department of Insurance.

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

32 (f) This chapter states the minimum requirements to be imposed
33 upon any entity offering or providing continuing care.

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

1 SEC. 3. Section 1770.5 is added to the Health and Safety Code,
2 to read:

3 1770.5. (a) The Department of Insurance shall succeed to and
4 be vested with all the duties, powers, purposes, functions,
5 responsibilities, and jurisdiction of the State Department of Social
6 Services described in this chapter, *except for oversight and*
7 *regulation of programs and services provided directly to residents*
8 *of the communities*. The Department of Insurance shall create a
9 Continuing Care Contracts Branch which shall succeed to and be
10 vested with the duties, powers, functions, responsibilities, and
11 jurisdiction of the former Continuing Care Contracts Branch in
12 the State Department of Social Services.

13 (b) All regulations, orders, and guidelines adopted pursuant to
14 this chapter by the State Department of Social Services, including
15 the former Continuing Care Contracts Branch in the State
16 Department of Social Services, and any of its predecessors in effect
17 immediately preceding the operative date of this section shall
18 remain in effect and shall be fully enforceable unless and until
19 readopted, amended, or repealed, or until they expire by their own
20 terms.

21 (c) Any action by or against the State Department of Social
22 Services pertaining to matters vested in the State Department of
23 Social Services by this chapter shall not abate but shall continue
24 in the name of the Department of Insurance, and the Department
25 of Insurance shall be substituted for the State Department of Social
26 Services and any of its predecessors by the court wherein the action
27 is pending. The substitution shall not in any way affect the rights
28 of the parties to the action. *This substitution shall not be construed*
29 *to affect the continuing responsibility of the State Department of*
30 *Social Services to provide oversight and regulation of programs*
31 *and services provided directly to residents of the communities*.

32 (d) All books, documents, records, and property of the State
33 Department of Social Services pertaining to functions transferred
34 to the Department of Insurance pursuant to this section shall be
35 transferred to the Department of Insurance.

36 (e) All unexpended balances of appropriations and other funds
37 available for use in connection with any function or the
38 administration of any law transferred to the Department of
39 Insurance pursuant to this section shall be transferred to the
40 Department of Insurance for use for the purpose for which the

1 appropriation was originally made or the funds were originally
2 available. If there is any doubt as to where those balances and
3 funds are transferred, the Department of Finance shall determine
4 where the balances and funds are transferred.

5 (f) No contract, lease, license, or any other agreement to which
6 the State Department of Social Services is a party pursuant to this
7 chapter shall be void or voidable by reason of this section, but
8 shall continue in full force and effect, with the Department of
9 Insurance assuming all of the rights, obligations, and duties of the
10 State Department of Social Services under this chapter. That
11 assumption by the Department of Insurance shall not in any way
12 affect the rights of the parties to the contract, lease, license, or
13 agreement.

14 (g) Every officer and employee of the State Department of Social
15 Services who is performing a function transferred to the
16 Department of Insurance pursuant to this section and who is serving
17 in the state civil service, other than as a temporary employee, shall
18 be transferred to the Department of Insurance pursuant to the
19 provisions of Section 19050.9 of the Government Code. The status,
20 position, and rights of these officers and employees shall not be
21 affected by the transfer and shall be retained by the person as an
22 officer or employee of the Department of Insurance, as the case
23 may be, pursuant to the State Civil Service Act (Part 2
24 (commencing with Section 18500) of Division 5 of Title 2 of the
25 Government Code), except as to a position that is exempt from
26 civil service.

27 (h) *The commissioner shall review the requirements of this*
28 *chapter and make recommendations to the Legislature as he or*
29 *she deems necessary to improve the oversight and regulation of*
30 *the financial management of continuing care retirement*
31 *communities to protect consumers who enter into continuing care*
32 *contracts.*

33 SEC. 4. Section 1771 of the Health and Safety Code is amended
34 to read:

35 1771. Unless the context otherwise requires, the definitions in
36 this section govern the interpretation of this chapter.

37 (a) (1) "Affiliate" means any person, corporation, limited
38 liability company, business trust, trust, partnership, unincorporated
39 association, or other legal entity that directly or indirectly controls,

1 is controlled by, or is under common control with, a provider or
2 applicant.

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

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

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

11 (5) “Assisted living services” includes, but is not limited to,
12 assistance with personal activities of daily living, including
13 dressing, feeding, toileting, bathing, grooming, mobility, and
14 associated tasks, to help provide for and maintain physical and
15 psychosocial comfort.

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

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

26 (b) (reserved)

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

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

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

36 (4) “Cash equivalent” means certificates of deposit and United
37 States treasury securities with a maturity of five years or less.

38 (5) “Certificate” or “certificate of authority” means the
39 certificate issued by the department, properly executed and bearing
40 the State Seal, authorizing a specified provider to enter into one

1 or more continuing care contracts at a single specified continuing
2 care retirement community.

3 (6) "Commissioner" means the Insurance Commissioner.

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

12 (8) "Consideration" means some right, interest, profit, or benefit
13 paid, transferred, promised, or provided by one party to another
14 as an inducement to contract. Consideration includes some
15 forbearance, detriment, loss, or responsibility, that is given,
16 suffered, or undertaken by a party as an inducement to another
17 party to contract.

18 (9) "Continuing care contract" means a contract that includes
19 a continuing care promise made, in exchange for an entrance fee,
20 the payment of periodic charges, or both types of payments. A
21 continuing care contract may consist of one agreement or a series
22 of agreements and other writings incorporated by reference.

23 (10) "Continuing care advisory committee" means an advisory
24 panel appointed pursuant to Section 1777.

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

32 (12) "Continuing care retirement community" means a facility
33 located within the State of California where services promised in
34 a continuing care contract are provided. A distinct phase of
35 development approved by the department may be considered to
36 be the continuing care retirement community when a project is
37 being developed in successive distinct phases over a period of
38 time. When the services are provided in residents' own homes, the
39 homes into which the provider takes those services are considered
40 part of the continuing care retirement community.

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

(d) (1) “Department” means the Department of Insurance, *except with respect to the oversight and regulation of programs and services provided directly to residents of the communities, in which case “department” means State Department of Social Services.*

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

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

(4) “Depository” means a bank or institution that is a member of the Federal Deposit Insurance Corporation or a comparable deposit insurance program.

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

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

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

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

16 (4) "Equity" means the value of real property in excess of the
17 aggregate amount of all liabilities secured by the property.

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

23 (6) "Equity project" means a continuing care retirement
24 community where residents receive an equity interest in the
25 continuing care retirement community property.

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

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

37 (f) "Facility" means any place or accommodation where a
38 provider provides or will provide a resident with care or related
39 services, whether or not the place or accommodation is constructed,
40 owned, leased, rented, or otherwise contracted for by the provider.

1 (g) (reserved)

2 (h) (reserved)

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

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

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

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

13 (i) The Federal Home Loan Bank System.

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

15 (iii) The Federal Financing Bank.

16 (iv) The Government National Mortgage Association.

17 (v) The Farmer’s Home Administration.

18 (vi) The Federal Home Loan Mortgage Corporation of the
19 Federal Housing Administration.

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

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

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

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

36 (F) Long-term investment agreements, which have maturity
37 dates in excess of one year, with financial institutions, including,
38 but not limited to, banks and insurance companies or their affiliates,
39 if the financial institution’s paying ability for debt obligations or
40 long-term claims or the paying ability of a related guarantor of the

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

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

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

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

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

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

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

39 (J) Bonds that are not issued by the United States or any federal
40 agency, but that are listed on a national exchange and that are rated

1 at least “A” by Moody’s Investors Service, or the equivalent rating
2 by Standard and Poor’s Corporation or Fitch Investors Service.

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

7 (j) (reserved)

8 (k) (reserved)

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

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

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

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

32 (o) (reserved)

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

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

38 (3) “Permit to accept deposits” means a written authorization
39 by the department permitting an applicant to enter into deposit

1 agreements regarding a single specified continuing care retirement
2 community.

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

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

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

13 (7) “Promise to provide one or more elements of care” means
14 any expressed or implied representation that one or more elements
15 of care will be provided or will be available, such as by preferred
16 access.

17 (8) “Proposes” means a representation that an applicant or
18 provider will or intends to make a future promise to provide care,
19 including a promise that is subject to a condition, such as the
20 construction of a continuing care retirement community or the
21 acquisition of a certificate of authority.

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

30 (10) “Provisional certificate of authority” means the certificate
31 issued by the department, properly executed and bearing the State
32 Seal, under Section 1786. A provisional certificate of authority
33 shall be limited to the specific continuing care retirement
34 community and number of units identified in the applicant’s
35 application.

36 (q) (reserved)

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

39 (2) “Refundable contract” means a continuing care contract that
40 includes a promise, expressed or implied, by the provider to pay

1 an entrance fee refund or to repurchase the transferor's unit,
2 membership, stock, or other interest in the continuing care
3 retirement community when the promise to refund some or all of
4 the initial entrance fee extends beyond the resident's sixth year of
5 residency. Providers that enter into refundable contracts shall be
6 subject to the refund reserve requirements of Section 1792.6. A
7 continuing care contract that includes a promise to repay all or a
8 portion of an entrance fee that is conditioned upon reoccupancy
9 or resale of the unit previously occupied by the resident shall not
10 be considered a refundable contract for purposes of the refund
11 reserve requirements of Section 1792.6, provided that this
12 conditional promise of repayment is not referred to by the applicant
13 or provider as a "refund."

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

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

19 (5) "Resident" means a person who enters into a continuing
20 care contract with a provider, or who is designated in a continuing
21 care contract to be a person being provided or to be provided
22 services, including care, board, or lodging.

23 (6) "Residential care facility for the elderly" means a housing
24 arrangement as defined by Section 1569.2.

25 (7) "Residential living unit" means a living unit in a continuing
26 care retirement community that is not used exclusively for assisted
27 living services or nursing services.

28 (s) (reserved)

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

31 (2) "Transfer trauma" means death, depression, or regressive
32 behavior, that is caused by the abrupt and involuntary transfer of
33 an elderly resident from one home to another and results from a
34 loss of familiar physical environment, loss of well-known
35 neighbors, attendants, nurses and medical personnel, the stress of
36 an abrupt break in the small routines of daily life, or the loss of
37 visits from friends and relatives who may be unable to reach the
38 new facility.

39 (3) "Transferor" means a person who transfers, or promises to
40 transfer, consideration in exchange for care and related services

1 under a continuing care contract or proposed continuing care
2 contract, for the benefit of another. A transferor shall have the
3 same rights to cancel and obtain a refund as the depositor under
4 the deposit agreement or the resident under a continuing care
5 contract.

6 SEC. 5. Section 1771.7 of the Health and Safety Code is
7 amended to read:

8 1771.7. (a) No resident of a continuing care retirement
9 community shall be deprived of any civil or legal right, benefit,
10 or privilege guaranteed by law, by the California Constitution, or
11 by the United States Constitution, solely by reason of status as a
12 resident of a community. In addition, because of the discretely
13 different character of residential living unit programs that are a
14 part of continuing care retirement communities, this section shall
15 augment Chapter 3.9 (commencing with Section 1599), Sections
16 72527 and 87572 of Title 22 of the California Code of Regulations,
17 and other applicable state and federal law and regulations.

18 (b) A prospective resident shall have the right to visit each of
19 the different care levels and to inspect assisted living and skilled
20 nursing home licensing reports including, but not limited to, the
21 most recent inspection reports and findings of complaint
22 investigations covering a period of no less than two years, prior
23 to signing a continuing care contract.

24 (c) All residents in residential living units shall have all of the
25 following rights:

26 (1) To live in an attractive, safe, and well maintained physical
27 environment.

28 (2) To live in an environment that enhances personal dignity,
29 maintains independence, and encourages self-determination.

30 (3) To participate in activities that meet individual physical,
31 intellectual, social, and spiritual needs.

32 (4) To expect effective channels of communication between
33 residents and staff, and between residents and the administration
34 or provider's governing body.

35 (5) To receive a clear and complete written contract that
36 establishes the mutual rights and obligations of the resident and
37 the continuing care retirement community.

38 (6) To manage his or her financial affairs.

39 (7) To be assured that all donations, contributions, gifts, or
40 purchases of provider-sponsored financial products shall be

1 voluntary, and may not be a condition of acceptance or of ongoing
2 eligibility for services.

3 (8) To maintain and establish ties to the local community.

4 (9) To organize and participate freely in the operation of
5 independent resident organizations and associations.

6 (d) A continuing care retirement community shall maintain an
7 environment that enhances the residents' self-determination and
8 independence. The provider shall do both of the following:

9 (1) Encourage the formation of a resident association by
10 interested residents who may elect a governing body. The provider
11 shall provide space and post notices for meetings, and provide
12 assistance in attending meetings for those residents who request
13 it. In order to promote a free exchange of ideas, at least part of
14 each meeting shall be conducted without the presence of any
15 continuing care retirement community personnel. The association
16 may, among other things, make recommendations to management
17 regarding resident issues that impact the residents' quality of life,
18 quality of care, exercise of rights, safety and quality of the physical
19 environment, concerns about the contract, fiscal matters, or other
20 issues of concern to residents. The management shall respond, in
21 writing, to a written request or concern of the resident association
22 within 20 working days of receiving the written request or concern.
23 Meetings shall be open to all residents to attend as well as to
24 present issues. Executive sessions of the governing body shall be
25 attended only by the governing body.

26 (2) Establish policies and procedures that promote the sharing
27 of information, dialogue between residents and management, and
28 access to the provider's governing body. The provider shall
29 biennially conduct a resident satisfaction survey that shall be made
30 available to the resident association or its governing body, or, if
31 neither exists, to a committee of residents at least 14 days prior to
32 the next semiannual meeting of residents and the governing board
33 of the provider required by subdivision (c) of Section 1771.8. A
34 copy of the survey shall be posted in a conspicuous location at
35 each facility.

36 (e) In addition to any statutory or regulatory bill of rights
37 required to be provided to residents of residential care facilities
38 for the elderly or skilled nursing facilities, the provider shall
39 provide a copy of the bill of rights prescribed by this section to
40 each resident at the time or before the resident signs a continuing

1 care contract, and at any time when the resident is proposed to be
2 moved to a different level of care.

3 (f) Each continuing care retirement community shall prominently
4 post in areas accessible to the residents and visitors a notice that
5 a copy of rights applicable to residents pursuant to this section and
6 any governing regulation issued by the Continuing Care Contracts
7 Branch of the department is available upon request from the
8 provider. The notice shall also state that the residents have a right
9 to file a complaint with the Continuing Care Contracts Branch for
10 any violation of those rights and shall contain information
11 explaining how a complaint may be filed, including the telephone
12 number and address of the Continuing Care Contracts Branch.

13 (g) The resident has the right to freely exercise all rights
14 pursuant to this section, in addition to political rights, without
15 retaliation by the provider.

16 (h) The department may, upon receiving a complaint of a
17 violation of this section, request a copy of the policies and
18 procedures along with documentation on the conduct and findings
19 of any self-evaluations and consult with the Continuing Care
20 Advisory Committee for determination of compliance.

21 (i) Failure to comply with this section shall be grounds for the
22 imposition of conditions on, suspension of, or revocation of the
23 provisional certificate of authority or certificate of authority
24 pursuant to Section 1793.21.

25 (j) Failure to comply with this section constitutes a violation of
26 residents' rights. Pursuant to Section 1569.49, the department shall
27 impose and collect a civil penalty of not more than one hundred
28 fifty dollars (\$150) per violation upon a continuing care retirement
29 community that violates a right guaranteed by this section.

30 SEC. 6. Section 1776.3 of the Health and Safety Code is
31 amended to read:

32 1776.3. (a) The Continuing Care Contracts Branch of the
33 department shall enter and review each continuing care retirement
34 community in the state at least once every three years to augment
35 the branch's assessment of the provider's financial soundness.

36 (b) During its facility visits, the branch shall consider the
37 condition of the facility, whether the facility is operating in
38 compliance with applicable state law, and whether the provider is
39 performing the services it has specified in its continuing care
40 contracts.

1 (c) The branch shall issue guidelines that require each provider
2 to adopt a comprehensive disaster preparedness plan, update that
3 plan at least every three years, submit a copy to the department,
4 and make copies available to residents in a prominent location in
5 each continuing care retirement community facility.

6 (d) (1) The branch shall respond within 15 business days to
7 residents' rights, service-related, and financially related complaints
8 by residents, and shall furnish to residents upon request and within
9 15 business days any document or report filed with the department
10 by a continuing care provider, except documents protected by
11 privacy laws.

12 (2) The branch shall provide the Continuing Care Advisory
13 Committee with a summary of all residents' rights, service-related,
14 and financially related complaints by residents. The provider shall
15 disclose any citation issued by the department pursuant to Section
16 1793.6 in its disclosure statement to residents as updated annually,
17 and shall post a notice of the citation in a conspicuous location in
18 the facility. The notice shall include a statement indicating that
19 residents may obtain additional information regarding the citation
20 from the provider and the department.

21 (e) The branch shall annually review, summarize, and report to
22 the commissioner on the work of the Continuing Care Advisory
23 Committee, including any issues arising from its review of the
24 condition of any continuing care retirement community or any
25 continuing care retirement community provider, and including any
26 recommendations for actions by the committee, the department,
27 or the Legislature to improve oversight of continuing care
28 retirement community.

29 SEC. 7. Section 1777.2 of the Health and Safety Code is
30 amended to read:

31 1777.2. (a) The Continuing Care Advisory Committee shall:

32 (1) Review the financial and managerial condition of continuing
33 care retirement communities operating under a certificate of
34 authority.

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

1 (3) Monitor the condition of those continuing care retirement
2 communities that the department or the chair of the committee
3 may request.

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

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

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

18 (c) The committee may report on its recommendations directly
19 to the commissioner.

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

22 *SEC. 8. Section 1778 of the Health and Safety Code is repealed.*

23 ~~1778. (a) There is hereby created in the State Treasury a fund~~
24 ~~which shall be known as the Continuing Care Provider Fee Fund.~~
25 ~~The fund shall consist of fees received by the department pursuant~~
26 ~~to this chapter. Notwithstanding Section 13340 of the Government~~
27 ~~Code, the Continuing Care Provider Fee Fund is hereby~~
28 ~~continuously appropriated to the department, without regard to~~
29 ~~fiscal years.~~

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

32 ~~(1) Program personnel salary costs, to include but not be limited~~
33 ~~to: Continuing Care Contracts Program Manager at a level~~
34 ~~consistent with other management classifications that direct a~~
35 ~~regulatory program with statewide impact requiring skills and~~
36 ~~knowledge at the highest level with responsibility for work of the~~
37 ~~most critical or sensitive nature as it relates to the department's~~
38 ~~mission, including protecting vulnerable elderly persons,~~
39 ~~supervising technical staff with oversight of highly complex~~
40 ~~operations and responsibility for policy and program evaluation~~

1 and recommendations; full-time legal counsel with a working
2 knowledge of all laws relating to the regulation of continuing care
3 retirement communities and residential care facilities for the
4 elderly; financial analyst with working knowledge of generally
5 accepted accounting principles and auditing standards; and other
6 appropriate analytical and technical support positions.

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

11 (3) ~~Other program costs or costs directly supporting program~~
12 ~~staff.~~

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

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

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

24 SEC. 9. *Section 1778 is added to the Health and Safety Code,*
25 *to read:*

26 *1778. There is hereby created in the State Treasury a fund that*
27 *shall be known as the Continuing Care Provider Fee Fund. The*
28 *fund shall consist of two accounts, the Insurance Account and the*
29 *State Department of Social Services Account. Ninety-five percent*
30 *of fees received pursuant to this chapter shall be deposited into*
31 *the Insurance Account and 5 percent shall be deposited into the*
32 *State Department of Social Services Account. Notwithstanding*
33 *Section 13340 of the Government Code, the moneys in the*
34 *Insurance Account are continuously appropriated to the*
35 *Department of Insurance and moneys in the State Department of*
36 *Social Services Account are continuously appropriated to the State*
37 *Department of Social Services for the purposes of this chapter.*

38 SEC. 8.

39 SEC. 10. *Section 1788 of the Health and Safety Code is*
40 *amended to read:*

1 1788. (a) A continuing care contract shall contain all of the
2 following:

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

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

6 (3) The resident's name and the identity of the unit the resident
7 will occupy.

8 (4) If there is a transferor other than the resident, the transferor
9 shall be a party to the contract and the transferor's name and
10 address shall be specified.

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

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

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

22 (8) A list of the services that will be made available to the
23 resident as required to provide the appropriate level of care. The
24 list of services shall include the services required as a condition
25 for licensure as a residential care facility for the elderly, including
26 all of the following:

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

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

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

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

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

39 (F) Assisted living services.

40 (G) Assistance with taking medications.

1 (H) Central storing and distribution of medications.

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

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

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

13 (A) A continuing care retirement community may transfer a
14 resident under the following conditions, taking into account the
15 appropriateness and necessity of the transfer and the goal of
16 promoting resident independence:

17 (i) The resident is nonambulatory. The definition of
18 “nonambulatory,” as provided in Section 13131, shall either be
19 stated in full in the continuing care contract or be cited. If Section
20 13131 is cited, a copy of the statute shall be made available to the
21 resident, either as an attachment to the continuing care contract or
22 by specifying that it will be provided upon request. If a
23 nonambulatory resident occupies a room that has a fire clearance
24 for nonambulatory residence, transfer shall not be necessary.

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

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

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

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

38 (i) Involve the resident and the resident’s responsible person,
39 as defined in paragraph (6) of subdivision (r) of Section 87101 of
40 Title 22 of the California Code of Regulations, and upon the

1 resident's or responsible person's request, family members, or the
2 resident's physician or other appropriate health professional, in
3 the assessment process that forms the basis for the level of care
4 transfer decision by the provider. The provider shall offer an
5 explanation of the assessment process. If an assessment tool or
6 tools, including scoring and evaluating criteria, are used in the
7 determination of the appropriateness of the transfer, the provider
8 shall make copies of the completed assessment available upon the
9 request of the resident or the resident's responsible person.

10 (ii) Prior to sending a formal notification of transfer, the provider
11 shall conduct a care conference with the resident and the resident's
12 responsible person, and upon the resident's or responsible person's
13 request, family members, and the resident's health care
14 professionals, to explain the reasons for transfer.

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

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

21 (v) The notice of transfer shall be made at least 30 days before
22 the transfer is expected to occur, except when the health or safety
23 of the resident or other residents is in danger, or the transfer is
24 required by the resident's urgent medical needs. Under those
25 circumstances, the written notice shall be made as soon as
26 practicable before the transfer.

27 (vi) The written notice shall contain the reasons for the transfer,
28 the effective date, the designated level of care or location to which
29 the resident will be transferred, a statement of the resident's right
30 to a review of the transfer decision at a care conference, as provided
31 for in subparagraph (C), and for disputed transfer decisions, the
32 right to review by the Continuing Care Contracts Branch of the
33 department, as provided for in subparagraph (D). The notice shall
34 also contain the name, address, and telephone number of the
35 department's Continuing Care Contracts Branch.

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

39 (C) The resident has the right to review the transfer decision at
40 a subsequent care conference that shall include the resident, the

1 resident's responsible person, and upon the resident's or
2 responsible person's request, family members, the resident's
3 physician or other appropriate health care professional, and
4 members of the provider's interdisciplinary team. The local
5 ombudsperson may also be included in the care conference, upon
6 the request of the resident, the resident's responsible person, or
7 the provider.

8 (D) For disputed transfer decisions, the resident or the resident's
9 responsible person has the right to a prompt and timely review of
10 the transfer process by the Continuing Care Contracts Branch of
11 the department.

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

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

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

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

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

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

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

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

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

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

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

13 (17) The amount of the entrance fee.

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

18 (19) The amount of any processing fee.

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

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

23 (A) A statement that the occupancy and use of the
24 accommodations by the resident is contingent upon the regular
25 payment of the fee.

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

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

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

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

39 (F) A statement of billing practices, procedures, and timelines.
40 A provider shall allow a minimum of 14 days between the date a

1 bill is sent and the date payment is due. A charge for a late payment
2 may only be assessed if the amount and any condition for the
3 penalty is stated on the bill.

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

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

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

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

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

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

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

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

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

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

1 purpose of his or her visit, enter and inspect the entire premises at
2 any time, without advance notice.

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

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

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

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

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

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

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

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

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

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

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

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

(A) Specify the amount, if any, the resident has paid or will pay for upgrades, special features, or modifications to the resident's 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 Department of Insurance 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.

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

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

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

12 (2) Care will be provided for the duration of the resident's life
13 unless the life care contract is canceled or terminated by the
14 provider during the cancellation period or after the cancellation
15 period for good cause.

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

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

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

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

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

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

35 (B) The provider's decision shall be final and conclusive
36 regarding any adjustments to be made or any action to be taken
37 regarding any charitable consideration extended to any of its
38 residents.

39 (C) The provider is entitled to payment for the actual costs of
40 care out of any property acquired by the resident subsequent to

1 any adjustment extended to the resident under paragraph (1), or
2 from any other property of the resident which the resident failed
3 to disclose.

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

7 (E) The provider may receive an assignment from the resident
8 of the right to apply for and to receive the benefits, for and on
9 behalf of the resident.

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

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

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

23 (3) Identify legal remedies which may be available to the
24 provider if the resident makes any material misrepresentation or
25 omission pertaining to the resident's assets or health.

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

29 (5) Protect the provider's ability to waive a resident's breach
30 of the terms or provisions of the continuing care contract in specific
31 instances without relinquishing its right to insist upon full
32 compliance by the resident with all terms or provisions in the
33 contract.

34 (6) Provide that the resident shall reimburse the provider for
35 any uninsured loss or damage to the resident's unit, beyond normal
36 wear and tear, resulting from the resident's carelessness or
37 negligence.

38 (7) Provide that the resident agrees to observe the off-limit areas
39 of the continuing care retirement community designated by the
40 provider for safety reasons. The provider may not include any

1 provision in a continuing care contract that absolves the provider
2 from liability for its negligence.

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

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

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

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

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

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

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

23 (e) A copy of the current audited financial statement of the
24 provider shall be attached to every continuing care contract. For
25 a provider whose current audited financial statement does not
26 accurately reflect the financial ability of the provider to fulfill the
27 continuing care contract obligations, the financial statement
28 attached to the continuing care contract shall include all of the
29 following:

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

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

36 (3) A copy of the approved financial plan for meeting the reserve
37 requirements.

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

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

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

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

"NOTICE OF CANCELLATION" (date)

Your first date of occupancy under this contract
is: _____

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

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

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

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

Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to

1 the provider, then you remain liable for performance of all
2 obligations under the contract.

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

6
7 to _____
8 (Name of provider)

9 at _____
10 (Address of provider's place of business)

11 not later than midnight of _____ (date).

12 I hereby cancel this
13 transaction

14 (Resident or
15 Transferor's signature)"
16

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