

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

AMENDED IN ASSEMBLY SEPTEMBER 1, 2015

AMENDED IN ASSEMBLY AUGUST 20, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 6, 2015

AMENDED IN ASSEMBLY JUNE 25, 2015

AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 475

Introduced by Senator Monning

February 26, 2015

An act to amend Sections 1771, 1788, and 1788.4 of, and to add Section 1788.5 to, the Health and Safety Code, relating to continuing care contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 475, as amended, Monning. Continuing care contracts: cancellation: payments.

Existing law requires a continuing care retirement facility, as defined, to possess a certificate of authority issued by the State Department of Social Services before it can enter into a continuing care contract, as defined. Existing law requires that a continuing care contract be in writing and contain specified information. Existing law provides that a continuing care contract may be canceled without cause by written notice from either party within 90 days of the resident's initial occupancy.

Existing law requires a provider to pay, during the cancellation period, all refunds owed to a resident within 14 days after a resident makes possession of the living unit available to the provider. Existing law requires a provider to pay a lump-sum payment that is conditioned upon resale of a unit to a resident within 14 days after resale of the unit.

This bill would require a continuing care retirement facility to pay the full lump-sum payment that is conditioned upon resale of a unit to a resident within 14 days after resale of a unit. The bill would require a continuing care retirement facility, for contracts signed after January 1, 2016, to pay a resident or his or her estate a specified portion of the full lump-sum payment, notwithstanding a provider's documented good-faith effort to resell the unit, if the unit remains vacant 120 days after the resident's termination. The bill would require any payment balance not paid to a resident within 180 days to accrue ~~compound interest every 30 days~~ *simple interest, to be compounded annually*, at a rate ~~not lower than~~ *of 4%* until the full lump-sum payment is made. The bill would require any payment balance not paid to a resident within 240 days to accrue ~~compound interest every 30 days~~ *simple interest, to be compounded annually*, at a rate ~~not lower than~~ *of 6%* until the full lump-sum payment is made. The bill would require a facility to make the lump-sum payment to a resident's estate if the resident is deceased. The bill would provide that the repayment by a provider of all or a portion of an entrance fee before the resale of a unit would not subject any other entrance fee to the refund reserve requirements, except as provided. *The bill would provide that, until January 1, 2017, these provisions do not apply to specified projects that are in development prior to January 1, 2016, provided that the initial contract for the project is entered into on or before January 1, 2017.*

The bill would authorize any resident whose contract calls for a lump-sum payment conditioned upon resale of a unit to file a complaint with the department if the unit has not been resold for more than 12 months after possession of the unit was made available to the provider. The bill would require the department, in response to the complaint, to perform an investigation, as specified, to determine whether the provider made a sufficient ~~good-faith~~ *good-faith* effort to resell or reoccupy the unit. The bill would authorize a resident or a provider to submit a written request to the department for a formal review of the determination. The bill would require the provider to repay the full lump-sum payment owed to the resident within 20 business days of the department's final

determination that the provider did not make a sufficient ~~good-faith~~ *good-faith* effort to reoccupy or resell the unit.

The bill would make corresponding changes to require a continuing care contract to contain a statement that a provider is prohibited from charging the resident or his or her estate a monthly fee once a unit has been permanently vacated by the resident, unless the fee is part of an equity interest contract. The bill would also require a continuing care contract that provides for a refund or repayment of a lump sum of all or part of the entrance fee to include a statement that the provider will make a good faith effort to reoccupy or resell a unit for which a lump-sum payment is conditioned upon resale of the unit.

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

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:

3 1771. Unless the context otherwise requires, the definitions in
4 this section govern the interpretation of this chapter.

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

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

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

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

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

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

4 (7) “Audited financial statement” means financial statements
5 prepared in accordance with generally accepted accounting
6 principles, including the opinion of an independent certified public
7 accountant, and notes to the financial statements considered
8 customary or necessary to provide full disclosure and complete
9 information regarding the provider’s financial statements, financial
10 condition, and operation.

11 (b) (reserved)

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

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

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

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

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

28 (6) “Condition” means a restriction, specific action, or other
29 requirement imposed by the department for the initial or continuing
30 validity of a permit to accept deposits, a provisional certificate of
31 authority, or a certificate of authority. A condition may limit the
32 circumstances under which the provider may enter into any new
33 deposit agreement or contract, or may be imposed as a condition
34 precedent to the issuance of a permit to accept deposits, a
35 provisional certificate of authority, or a certificate of authority.

36 (7) “Consideration” means some right, interest, profit, or benefit
37 paid, transferred, promised, or provided by one party to another
38 as an inducement to contract. Consideration includes some
39 forbearance, detriment, loss, or responsibility, that is given,

1 suffered, or undertaken by a party as an inducement to another
2 party to contract.

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

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

15 (10) “Continuing care retirement community” means a facility
16 located within the State of California where services promised in
17 a continuing care contract are provided. A distinct phase of
18 development approved by the department may be considered to
19 be the continuing care retirement community when a project is
20 being developed in successive distinct phases over a period of
21 time. When the services are provided in residents’ own homes, the
22 homes into which the provider takes those services are considered
23 part of the continuing care retirement community.

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

36 (d) (1) “Department” means the State Department of Social
37 Services.

38 (2) “Deposit” means any transfer of consideration, including a
39 promise to transfer money or property, made by a depositor to any
40 entity that promises or proposes to promise to provide continuing

1 care, but is not authorized to enter into a continuing care contract
2 with the potential depositor.

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

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

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

19 (6) “Director” means the Director of Social Services.

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

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

26 (3) “Entrance fee” means the sum of any initial, amortized, or
27 deferred transfer of consideration made or promised to be made
28 by, or on behalf of, a person entering into a continuing care contract
29 for the purpose of ensuring care or related services pursuant to that
30 continuing care contract or as full or partial payment for the
31 promise to provide care for the term of the continuing care contract.
32 Entrance fee includes the purchase price of a condominium,
33 cooperative, or other interest sold in connection with a promise of
34 continuing care. An initial, amortized, or deferred transfer of
35 consideration that is greater in value than 12 times the monthly
36 care fee shall be presumed to be an entrance fee.

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

39 (5) “Equity interest” means an interest held by a resident in a
40 continuing care retirement community that consists of either an

1 ownership interest in any part of the continuing care retirement
2 community property or a transferable membership that entitles the
3 holder to reside at the continuing care retirement community.

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

7 (7) “Equity securities” shall refer generally to large and
8 midcapitalization corporate stocks that are publicly traded and
9 readily liquidated for cash, and shall include shares in mutual funds
10 that hold portfolios consisting predominantly of these stocks and
11 other qualifying assets, as defined by Section 1792.2. Equity
12 securities shall also include other similar securities that are
13 specifically approved by the department.

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

18 (f) “Facility” means any place or accommodation where a
19 provider provides or will provide a resident with care or related
20 services, whether or not the place or accommodation is constructed,
21 owned, leased, rented, or otherwise contracted for by the provider.

22 (g) (reserved)

23 (h) (reserved)

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

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

27 (A) Direct obligations of the United States, including obligations
28 issued or held in book-entry form on the books of the United States
29 Department of the Treasury or obligations the timely payment of
30 the principal of, and the interest on, which are fully guaranteed by
31 the United States.

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

34 (i) The Federal Home Loan Bank System.

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

36 (iii) The Federal Financing Bank.

37 (iv) The Government National Mortgage Association.

38 (v) The Farmers Home Administration.

39 (vi) The Federal Home Loan Mortgage Corporation of the
40 Federal Housing Administration.

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

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

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

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

17 (F) Long-term investment agreements, which have maturity
18 dates in excess of one year, with financial institutions, including,
19 but not limited to, banks and insurance companies or their affiliates,
20 if the financial institution's paying ability for debt obligations or
21 long-term claims or the paying ability of a related guarantor of the
22 financial institution for these obligations or claims, is rated in one
23 of the two highest rating categories of each rating agency rating
24 those instruments, or if the short-term investment agreements are
25 with the financial institution or the related guarantor of the financial
26 institution, the long-term or short-term debt obligations, whichever
27 is applicable, of which are rated in one of the two highest long-term
28 or short-term rating categories, of each rating agency rating the
29 bonds of the financial institution or the related guarantor, provided
30 that if the rating falls below the two highest rating categories, the
31 investment agreement shall allow the provider the option to replace
32 the financial institution or the related guarantor of the financial
33 institution or shall provide for the investment securities to be fully
34 collateralized by investments described in subparagraph (A), and,
35 provided further, if so collateralized, that the provider has a
36 perfected first security lien on the collateral, as evidenced by an
37 opinion of counsel and the collateral is held by the provider.

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

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

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

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

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

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

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

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

28 (j) (reserved)

29 (k) (reserved)

30 (l) “Life care contract” means a continuing care contract that
31 includes a promise, expressed or implied, by a provider to provide
32 or pay for routine services at all levels of care, including acute
33 care and the services of physicians and surgeons, to the extent not
34 covered by other public or private insurance benefits, to a resident
35 for the duration of his or her life. Care shall be provided under a
36 life care contract in a continuing care retirement community having
37 a comprehensive continuum of care, including a skilled nursing
38 facility, under the ownership and supervision of the provider on
39 or adjacent to the premises. A change shall not be made in the
40 monthly fee based on level of care. A life care contract shall also

1 include provisions to subsidize residents who become financially
2 unable to pay their monthly care fees.

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

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

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

13 (o) (reserved)

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

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

19 (3) “Permanent closure” means the voluntary or involuntary
20 termination or forfeiture, as specified in subdivisions (a), (b), (g),
21 (h), and (i) of Section 1793.7, of a provider’s certificate of authority
22 or license, or another action that results in the permanent relocation
23 of residents. Permanent closure does not apply in the case of a
24 natural disaster or other event out of the provider’s control.

25 (4) “Permit to accept deposits” means a written authorization
26 by the department permitting an applicant to enter into deposit
27 agreements regarding a single specified continuing care retirement
28 community.

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

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

36 (7) “Processing fee” means a payment to cover administrative
37 costs of processing the application of a depositor or prospective
38 resident.

39 (8) “Promise to provide one or more elements of care” means
40 any expressed or implied representation that one or more elements

1 of care will be provided or will be available, such as by preferred
2 access.

3 (9) “Proposes” means a representation that an applicant or
4 provider will or intends to make a future promise to provide care,
5 including a promise that is subject to a condition, such as the
6 construction of a continuing care retirement community or the
7 acquisition of a certificate of authority.

8 (10) “Provider” means an entity that provides continuing care,
9 makes a continuing care promise, or proposes to promise to provide
10 continuing care. “Provider” also includes any entity that controls
11 an entity that provides continuing care, makes a continuing care
12 promise, or proposes to promise to provide continuing care. The
13 department shall determine whether an entity controls another
14 entity for purposes of this article. No homeowner’s association,
15 cooperative, or condominium association may be a provider.

16 (11) “Provisional certificate of authority” means the certificate
17 issued by the department, properly executed and bearing the State
18 Seal, under Section 1786. A provisional certificate of authority
19 shall be limited to the specific continuing care retirement
20 community and number of units identified in the applicant’s
21 application.

22 (q) (reserved)

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

25 (2) (A) “Refundable contract” means a continuing care contract
26 that includes a promise, expressed or implied, by the provider to
27 pay an entrance fee refund or to repurchase the transferor’s unit,
28 membership, stock, or other interest in the continuing care
29 retirement community when the promise to refund some or all of
30 the initial entrance fee extends beyond the resident’s sixth year of
31 residency. Providers that enter into refundable contracts shall be
32 subject to the refund reserve requirements of Section 1792.6.

33 (B) A continuing care contract that includes a promise to repay
34 all or a portion of an entrance fee that is conditioned upon
35 reoccupancy or resale of the unit previously occupied by the
36 resident shall not be considered a refundable contract for purposes
37 of the refund reserve requirements of Section 1792.6, provided
38 that this conditional promise of repayment is not referred to by the
39 applicant or provider as a “refund.” A provider may repay all or
40 a portion of an entrance fee that is conditioned upon resale of the

1 unit before the resale of the unit. The repayment of an entrance
2 fee before the resale of the unit shall not cause any other entrance
3 fee to be subject to the refund reserve requirements of Section
4 1792.6, provided that the provider does not promise, at the time
5 of contracting or thereafter, to make this type of early repayment,
6 represent that the provider intends to make this type of early
7 repayment, or indicate that the provider has a practice of making
8 this type of early repayment.

9 (3) “Resale fee” means a levy by the provider against the
10 proceeds from the sale of a transferor’s equity interest.

11 (4) “Reservation fee” refers to consideration collected by an
12 entity that has made a continuing care promise or is proposing to
13 make this promise and has complied with Section 1771.4.

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

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

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

23 (8) “Residential temporary relocation” means the relocation of
24 one or more residents, except in the case of a natural disaster that
25 is out of the provider’s control, from one or more residential living
26 units, assisted living units, skilled nursing units, or a wing, floor,
27 or entire continuing care retirement community building, due to a
28 change of use or major repairs or renovations. A residential
29 temporary relocation shall mean a relocation pursuant to this
30 subdivision that lasts for a period of at least nine months but that
31 does not exceed 18 months without the written agreement of the
32 resident.

33 (s) (reserved)

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

36 (2) “Transfer trauma” means death, depression, or regressive
37 behavior, that is caused by the abrupt and involuntary transfer of
38 an elderly resident from one home to another and results from a
39 loss of familiar physical environment, loss of well-known
40 neighbors, attendants, nurses and medical personnel, the stress of

1 an abrupt break in the small routines of daily life, or the loss of
2 visits from friends and relatives who may be unable to reach the
3 new facility.

4 (3) “Transferor” means a person who transfers, or promises to
5 transfer, consideration in exchange for care and related services
6 under a continuing care contract or proposed continuing care
7 contract, for the benefit of another. A transferor shall have the
8 same rights to cancel and obtain a refund as the depositor under
9 the deposit agreement or the resident under a continuing care
10 contract.

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

13 1788. (a) A continuing care contract shall contain all of the
14 following:

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

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

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

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

23 (5) If the provider has used the name of any charitable or
24 religious or nonprofit organization in its title before January 1,
25 1979, and continues to use that name, and that organization is not
26 responsible for the financial and contractual obligations of the
27 provider or the obligations specified in the continuing care contract,
28 the provider shall include in every continuing care contract a
29 conspicuous statement that clearly informs the resident that the
30 organization is not financially responsible.

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

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

34 (8) A list of the services that will be made available to the
35 resident as required to provide the appropriate level of care. The
36 list of services shall include the services required as a condition
37 for licensure as a residential care facility for the elderly, including
38 all of the following:

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

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

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

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

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

13 (F) Assisted living services.

14 (G) Assistance with taking medications.

15 (H) Central storing and distribution of medications.

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

18 (9) An itemization of the services that are included in the
19 monthly fee and the services that are available at an extra charge.
20 The provider shall attach a current fee schedule to the continuing
21 care contract. The schedule shall state that a provider is prohibited
22 from charging the resident or his or her estate a monthly fee once
23 a unit has been permanently vacated by the resident, unless the fee
24 is part of an equity interest contract.

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

30 (A) A continuing care retirement community may transfer a
31 resident under the following conditions, taking into account the
32 appropriateness and necessity of the transfer and the goal of
33 promoting resident independence:

34 (i) The resident is nonambulatory. The definition of
35 "nonambulatory," as provided in Section 13131, shall either be
36 stated in full in the continuing care contract or be cited. If Section
37 13131 is cited, a copy of the statute shall be made available to the
38 resident, either as an attachment to the continuing care contract or
39 by specifying that it will be provided upon request. If a

1 nonambulatory resident occupies a room that has a fire clearance
2 for nonambulatory residents, transfer shall not be necessary.

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

6 (iii) The resident's condition or needs require the resident's
7 transfer to an assisted living care unit or skilled nursing facility,
8 because the level of care required by the resident exceeds that
9 which may be lawfully provided in the living unit.

10 (iv) The resident's condition or needs require the resident's
11 transfer to a nursing facility, hospital, or other facility, and the
12 provider has no facilities available to provide that level of care.

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

16 (i) Involve the resident and the resident's responsible person,
17 as defined in paragraph (6) of subdivision (r) of Section 87101 of
18 Title 22 of the California Code of Regulations, and upon the
19 resident's or responsible person's request, family members, or the
20 resident's physician or other appropriate health professional, in
21 the assessment process that forms the basis for the level of care
22 transfer decision by the provider. The provider shall offer an
23 explanation of the assessment process. If an assessment tool or
24 tools, including scoring and evaluating criteria, are used in the
25 determination of the appropriateness of the transfer, the provider
26 shall make copies of the completed assessment available upon the
27 request of the resident or the resident's responsible person.

28 (ii) Prior to sending a formal notification of transfer, the provider
29 shall conduct a care conference with the resident and the resident's
30 responsible person, and upon the resident's or responsible person's
31 request, family members, and the resident's health care
32 professionals, to explain the reasons for transfer.

33 (iii) Notify the resident and the resident's responsible person
34 of the reasons for the transfer in writing.

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

39 (v) The notice of transfer shall be made at least 30 days before
40 the transfer is expected to occur, except when the health or safety

1 of the resident or other residents is in danger, or the transfer is
2 required by the resident's urgent medical needs. Under those
3 circumstances, the written notice shall be made as soon as
4 practicable before the transfer.

5 (vi) The written notice shall contain the reasons for the transfer,
6 the effective date, the designated level of care or location to which
7 the resident will be transferred, a statement of the resident's right
8 to a review of the transfer decision at a care conference, as provided
9 for in subparagraph (C), and for disputed transfer decisions, the
10 right to review by the Continuing Care Contracts Branch of the
11 State Department of Social Services, as provided for in
12 subparagraph (D). The notice shall also contain the name, address,
13 and telephone number of the department's Continuing Care
14 Contracts Branch.

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

18 (C) The resident has the right to review the transfer decision at
19 a subsequent care conference that shall include the resident, the
20 resident's responsible person, and upon the resident's or
21 responsible person's request, family members, the resident's
22 physician or other appropriate health care professional, and
23 members of the provider's interdisciplinary team. The local
24 ombudsperson may also be included in the care conference, upon
25 the request of the resident, the resident's responsible person, or
26 the provider.

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

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

39 (F) Transfer of a second resident when a shared accommodation
40 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, including, but not limited to, terminating his or her contract after 18 months of residential temporary relocation, as defined in paragraph (8) of subdivision (r) of Section 1771. Unless the fee is part of an equity interest contract, a provider is prohibited from charging the resident or his or her estate a monthly fee once a unit has been permanently vacated by the resident.

(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 this paragraph shall not affect the validity of title to real property transferred pursuant to this chapter.

(17) The amount of the entrance fee.

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

1 (19) The amount of any processing fee.

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

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

6 (A) A statement that the occupancy and use of the
7 accommodations by the resident is contingent upon the regular
8 payment of the fee.

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

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

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

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

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

27 (G) A statement that the provider is prohibited from charging
28 the resident or his or her estate a monthly fee once a unit has been
29 permanently vacated by the resident, unless the fee is part of an
30 equity interest contract.

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 or repaying a lump sum
34 of any portion of the entrance fee, in the event of cancellation,
35 termination, or death. Every continuing care contract that provides
36 for a refund or repaying a lump sum of all or a part of the entrance
37 fee shall also do all of the following:

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

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

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

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

8 (C) State that the resident has a right to terminate his or her
9 contract after 18 months of residential temporary relocation, as
10 defined in paragraph (8) of subdivision (r) of Section 1771.
11 Provisions for refunds due to cancellation pursuant to this
12 subparagraph shall be set forth in the contract.

13 (D) State the provider shall make a good-faith effort to reoccupy
14 or resell a unit for which a lump-sum payment is conditioned upon
15 resale of the unit. No later than July 1, 2016, a provider shall
16 provide notice to all current residents with contracts applicable to
17 this subparagraph regarding the statement required by this
18 subparagraph as a clarification of the resident's existing contract.

19 (E) For all contracts with a repayment of all or a portion of the
20 entrance fee conditioned upon the resale of the unit, the provider
21 shall state the average and longest amount of time that it has taken
22 to resell a unit within the last five calendar years.

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

24
25 "NOTICE"

(date)

26
27 "This is a continuing care contract as defined by paragraph (8)
28 of subdivision (c), or subdivision (l) of Section 1771 of the
29 California Health and Safety Code. This continuing care contract
30 form has been approved by the State Department of Social Services
31 as required by subdivision (b) of Section 1787 of the California
32 Health and Safety Code. The basis for this approval was a
33 determination that (provider name) has submitted a contract that
34 complies with the minimum statutory requirements applicable to
35 continuing care contracts. The department does not approve or
36 disapprove any of the financial or health care coverage provisions
37 in this contract. Approval by the department is NOT a guaranty
38 of performance or an endorsement of any continuing care contract
39 provisions. Prospective transferors and residents are strongly
40 encouraged to carefully consider the benefits and risks of this

1 continuing care contract and to seek financial and legal advice
2 before signing.”

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

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

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

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

17 (2) Care will be provided for the duration of the resident’s life
18 unless the life care contract is canceled or terminated by the
19 provider during the cancellation period or after the cancellation
20 period for good cause.

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

25 (4) Monthly care fees will not be changed based on the resident’s
26 level of care or service.

27 (5) A resident who becomes financially unable to pay his or her
28 monthly care fees shall be subsidized provided the resident’s
29 financial need does not arise from action by the resident to divest
30 the resident of his or her assets.

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

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

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

1 (B) The provider's decision shall be final and conclusive
2 regarding any adjustments to be made or any action to be taken
3 regarding any charitable consideration extended to any of its
4 residents.

5 (C) The provider is entitled to payment for the actual costs of
6 care out of any property acquired by the resident subsequent to
7 any adjustment extended to the resident under this paragraph, or
8 from any other property of the resident that the resident failed to
9 disclose.

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

13 (E) The provider may receive an assignment from the resident
14 of the right to apply for and to receive the benefits, for and on
15 behalf of the resident.

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

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

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

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

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

35 (5) Protect the provider's ability to waive a resident's breach
36 of the terms or provisions of the continuing care contract in specific
37 instances without relinquishing its right to insist upon full
38 compliance by the resident with all terms or provisions in the
39 contract.

1 (6) Provide that the resident shall reimburse the provider for
2 any uninsured loss or damage to the resident's unit, beyond normal
3 wear and tear, resulting from the resident's carelessness or
4 negligence.

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

10 (8) Provide for the subrogation to the provider of the resident's
11 rights in the case of injury to a resident caused by the acts or
12 omissions of a third party, or for the assignment of the resident's
13 recovery or benefits in this case to the provider, to the extent of
14 the value of the goods and services furnished by the provider to
15 or on behalf of the resident as a result of the injury.

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

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

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

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

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

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

30 (e) A copy of the current audited financial statement of the
31 provider shall be attached to every continuing care contract. For
32 a provider whose current audited financial statement does not
33 accurately reflect the financial ability of the provider to fulfill the
34 continuing care contract obligations, the financial statement
35 attached to the continuing care contract shall include all of the
36 following:

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

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

4 (3) A copy of the approved financial plan for meeting the reserve
5 requirements.

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

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

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

22 (h) The provider shall attach to every continuing care contract
23 a completed form in duplicate, captioned "Notice of Cancellation."
24 The notice shall be easily detachable, and shall contain, in at least
25 10-point boldface type, the following statement:

26
27 "NOTICE OF CANCELLATION" (date)
28 Your first date of occupancy under this contract
29 is: _____
30

31 "You may cancel this transaction, without any penalty within
32 90 calendar days from the above date.

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

38 If you cancel, you are obligated to pay a reasonable processing
39 fee to cover costs and to pay for the reasonable value of the services
40 received by you from the provider up to the date you canceled or

1 made available to the provider the possession of any living unit
2 delivered to you under this contract, whichever is later.

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

6 Possession of the living unit must be made available to the
7 provider within 20 calendar days of your notice of cancellation.

8 If you fail to make the possession of any living unit available to
9 the provider, then you remain liable for performance of all
10 obligations under the contract.

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

14
15 to _____

16 (Name of provider)

17 at _____

18 (Address of provider's place of business)

19 not later than midnight of _____ (date).

20 I hereby cancel this

21 transaction

(Resident's or
Transferor's signature)"

22
23
24
25 SEC. 3. Section 1788.4 of the Health and Safety Code is
26 amended to read:

27 1788.4. (a) During the cancellation period, the provider shall
28 pay all refunds owed to a resident within 14 calendar days after a
29 resident makes possession of the living unit available to the
30 provider.

31 (b) After the cancellation period, any refunds due to a resident
32 under a continuing care contract shall be paid within 14 calendar
33 days after a resident makes possession of the living unit available
34 to the provider or 90 calendar days after death or receipt of notice
35 of termination, whichever is later.

36 (c) In nonequity projects, if the continuing care contract is
37 canceled by either party during the cancellation period or
38 terminated by the provider after the cancellation period, the resident
39 shall be refunded the difference between the total amount of

entrance, monthly, and optional fees paid and the amount used for care of the resident.

(d) If a resident has paid additional amounts for upgrades, special features, or modifications to the living unit and the provider terminates the resident's continuing care contract, the provider shall amortize those additional amounts at the same rate as the entrance fee and shall refund the unamortized balance to the resident.

(e) (1) A lump-sum payment to a resident after termination of a continuing care contract that is conditioned upon resale of the unit shall not be considered to be a refund and may not be characterized or advertised as a refund. The full lump-sum payment shall be paid to the resident within 14 calendar days after resale of the unit. For contracts signed after January 1, 2016, notwithstanding a provider's documented good-faith effort to resell the unit, the resident is entitled to the repayment of a specified portion, pursuant to subparagraphs (A) and (B), of the full lump-sum payment if the unit remains vacant 120 days after the resident's termination. This repayment shall not cause the contract in question to be deemed a refundable contract, as defined in paragraph (2) of subdivision (r) of Section 1771.

(A) When a continuing care contract is terminated by the death of a resident, at least 10 percent of the full lump-sum payment shall be paid to the resident's estate within 120 days after the resident's termination.

(B) When a continuing care contract is terminated for a reason not described in subparagraph (A), at least 20 percent of the full lump-sum payment shall be paid to the resident within 120 days after the resident's termination.

(2) Any payment balance that has not been paid to the resident within 180 days shall accrue interest at a rate calculated pursuant to paragraph (3). Any payment balance that has not been paid to the resident within 240 days shall accrue interest at a rate calculated pursuant to paragraph (4). Interest shall continue to accrue until the date the full lump-sum payment is paid to the resident. This paragraph shall apply only to continuing care contracts entered into on or after January 1, 2016.

(3) Any payments that are not paid to the resident within the 180-day period pursuant to paragraph (2) shall accrue ~~compound~~

1 ~~interest every 30 days~~ *simple interest, to be compounded annually,*
2 ~~at a rate not lower than of 4 percent.~~

3 (4) Any payments that are not paid to the resident within the
4 240-day period pursuant to paragraph (2) shall accrue ~~compound~~
5 ~~interest every 30 days~~ *simple interest, to be compounded annually,*
6 ~~at a rate not lower than of 6 percent.~~

7 (f) After the death of a resident, a lump-sum payment that is
8 conditioned upon resale of a unit shall be subject to subdivision
9 (e) and the payment and interest, if any, shall be payable to the
10 resident's estate.

11 (g) Except as otherwise obligated by an equity interest contract,
12 once the unit has been vacated and made available to the provider,
13 the provider shall not make any further charges to the resident or
14 his or her estate or charges against the lump-sum payment that is
15 due to the resident for purposes of continued monthly payments
16 to the provider or for maintenance or housekeeping on the vacated
17 unit.

18 (h) Nothing in this section shall be construed to limit or alter
19 any legal remedies otherwise available to a resident or his or her
20 estate.

21 *(i) Until January 1, 2017, this section shall not apply to a project*
22 *that is in development prior to January 1, 2016, including current*
23 *repayable agreements, current deposit agreements that contemplate*
24 *repayable entrance fees, and other projects that have received*
25 *department approval to market units pursuant to Section 1771.4,*
26 *or have received issuer, lender, or bond insurer approval to obtain*
27 *bond financing, or other governmental approval based on a*
28 *repayable entrance fee option, if the initial contract for the project*
29 *is entered into on or before January 1, 2017.*

30 SEC. 4. Section 1788.5 is added to the Health and Safety Code,
31 to read:

32 1788.5. (a) Any resident whose contract calls for a lump-sum
33 payment conditioned upon resale of a unit may file a complaint
34 with the department if the unit has not been resold for more than
35 twelve months after possession of the unit was made available to
36 the provider. A resident may file such a complaint regardless of
37 whether or not the contract includes a provision expressly requiring
38 a good faith effort to resell the unit.

39 (b) (1) In response to the complaint, the department shall
40 perform an investigation to determine whether the provider has

1 made a sufficient good faith effort to resell or reoccupy the unit.
2 At the department's discretion, the investigation may include any
3 of the following:

4 (A) Inspections of the unit and the continuing care retirement
5 community.

6 (B) Interviews with the provider, staff, and employees.

7 (C) Opinions and analysis from consultants.

8 (D) Written submissions from the resident or provider.

9 (E) A hearing.

10 (2) The department shall consider whether the provider has
11 adequately refurbished the unit for reletting, made necessary
12 repairs, reasonably marketed the unit to potential residents, and
13 shown the unit to prospective residents.

14 (c) Following the investigation, the department shall issue a
15 written determination, which includes a statement of the basis for
16 the determination.

17 (d) A resident, in the case of a determination of sufficient good
18 faith, or a provider, in the case of a determination of lack of
19 sufficient good faith, shall have the right to submit to the
20 department a written request for a formal review of the
21 determination within 20 business days after the department issues
22 the written determination. The party requesting review shall
23 provide all supporting documentation at that time. If no written
24 request for review is made, the department's determination shall
25 be considered final. If a written request for review is made, the
26 review shall be conducted by the deputy director of the Community
27 Care Licensing Division. If the department requires additional
28 information from the resident or provider, it shall be requested
29 within the first 30 business days after receiving the request for
30 review. The resident or provider shall provide this additional
31 information within 20 business days after it is requested by the
32 department. If the deputy director determines that the previous
33 determination was not made in accordance with applicable statutes
34 or regulations of the department, the department shall withdraw
35 its previous determination and issue a new determination. The
36 resident and provider shall be notified in writing of the deputy
37 director's decision within 40 business days from the time when
38 all necessary information has been received by the department.
39 The deputy director's decision is considered final and concludes
40 the administrative appeal rights of the resident and provider.

1 (e) If the department determines that the provider has not made
2 a sufficient good faith effort to reoccupy or resell the unit, the
3 provider shall repay the full lump-sum payment owed to the
4 resident within 20 business days after the department's
5 determination becomes final. The department's final determination
6 and its factual findings, and any interim determination and factual
7 findings, shall be inadmissible in court or any other proceeding,
8 with the exception of any proceeding to enforce this subdivision.

O