

AMENDED IN ASSEMBLY JULY 6, 2000  
AMENDED IN ASSEMBLY JUNE 15, 2000  
AMENDED IN SENATE APRIL 13, 2000

**SENATE BILL**

**No. 2077**

**Introduced by Senator Ortiz**

February 25, 2000

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An act to amend Sections 1770, 1771, 1771.2, 1772, 1773, 1774, 1775, 1776.6, 1777, 1777.2, 1777.4, 1779, 1779.2, 1779.4, 1779.6, 1779.8, 1779.10, 1780, 1780.2, 1780.4, 1781, 1781.2, 1781.4, 1781.6, 1781.8, 1781.10, 1782, 1783, 1783.2, 1784, 1785, 1786, 1786.2, 1787, 1788, 1788.2, 1788.4, 1789, 1789.1, 1789.2, 1789.4, 1789.6, 1789.8, 1793.5, 1793.6, 1793.7, 1793.8, 1793.9, 1793.11, 1793.13, 1793.15, 1793.17, 1793.19, 1793.21, 1793.23, 1793.25, 1793.27, 1793.29, 1793.50, 1793.56, 1793.58, 1793.60, and 1793.62 of, to amend and renumber Sections 1771.9, ~~1771.11, 1792, and 1792.2~~ and ~~1771.11~~ of, to add Sections 1771.3, 1772.2, 1779.7, and ~~1783.3~~ to, to add Article 6.5 (commencing with Section 1792) to Chapter 10 of Division 2 of, to add and repeal Article 6.6 (commencing 1783.3, 1792.1, 1792.3, 1792.4, 1792.5, and 1792.6 to, and to add Article 6.5 (commencing with Section 1792.11) of Chapter 10 of Division 2 of, to repeal Section 1771.8 of, and to repeal and add Sections 1771.4, 1771.5, 1771.6, and ~~1771.7~~ 1771.7, 1792, and 1792.2 of, the Health and Safety Code, relating to continuing care contracts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 2077, as amended, Ortiz. Continuing care contracts: retirement communities: elderly.

Existing law contains provisions relating to supervision of life care contracts, also known as continuing care contracts, including requirements governing continuing care communities and contracts.

This bill would revise and recast these provisions, including changes to the definitions used in these provisions, rights of continuing care community residents, requirements for the obtaining of a certificate of authority for a continuing care community, and continuing care contract requirements.

Existing law creates the Continuing Care Provider Fee Fund, which is continuously appropriated to the State Department of Social Services for purposes of administering continuing care retirement community provisions. The fund consists of fees paid to the department pursuant to these provisions.

This bill would make various changes in provisions relating to the establishment of fees, including requirements pertaining to the establishment of fees for changes in continuing care provider organizations, thus increasing payments to the fund and thereby constituting an appropriation.

This bill would also establish liquid reserve requirements that providers shall be required to meet, and would authorize the department to increase liquid reserve requirements in certain circumstances. The bill would establish refund reserve ~~fund~~ requirements for certain providers.

This bill would, until January 1, 2005, establish requirements for the department to implement a trial program, and report to the Legislature, on assessing long-term care provider solvency. The trial program would require each provider to obtain an actuarial study and file it with the department, *except under specified circumstances*.

Existing continuing care provisions specify that any entity that sells deposit subscriptions that either proposes to promise to provide care without having a current and valid permit to sell these subscriptions or fails to place any consideration into an escrow account is guilty of a misdemeanor.

This bill would provide that these misdemeanors relate to any entity that accepts deposits, rather than any entity that sells deposit subscriptions.



Because the bill would change the definition of a crime, it would constitute a state-mandated local program.

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

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

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 1770 of the Health and Safety  
2 Code is amended to read:

3 1770. The Legislature finds, declares, and intends all  
4 of the following:

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

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

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

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

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



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

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

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

14 1771. Unless the context otherwise requires, the  
15 definitions in this section govern the interpretation of this  
16 chapter.

17 (a) (1) “Affiliate” means any person, corporation,  
18 limited liability company, business trust, trust,  
19 partnership, unincorporated association, or other legal  
20 entity that directly or indirectly controls, is controlled by,  
21 or is under common control with, a provider or applicant.

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

25 (3) “Annual report” means the report ~~required to be~~  
26 ~~filed annually by each provider~~ *each provider is required*  
27 *to file annually* with the department, as described in  
28 Section 1790.

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

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

38 (6) “Assisted living unit” means the living area or unit  
39 within a continuing care retirement community that is  
40 specifically designed to provide ongoing assisted living.



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

9 (b) [reserved]

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

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

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

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

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

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



1 (7) “Consideration” means some right, interest, profit,  
2 or benefit paid, transferred, promised, or provided by one  
3 party to another as an inducement to contract.  
4 Consideration includes some forbearance, detriment,  
5 loss, or responsibility, that is given, suffered, or  
6 undertaken by a party as an inducement to another party  
7 to contract.

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

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

16 (10) “Continuing care promise” means a promise,  
17 expressed or implied, by a provider to provide one or  
18 more elements of care to an elderly resident for the  
19 duration of his or her life or for a term in excess of one  
20 year. Any such promise or representation, whether part  
21 of a continuing care contract, other agreement, or series  
22 of agreements, or contained in any advertisement,  
23 brochure, or other material, either written or oral, is a  
24 continuing care promise.

25 (11) “Continuing care retirement community” means  
26 a facility located within the State of California where  
27 services promised in a continuing care contract are  
28 provided. A distinct phase of development approved by  
29 the department may be considered to be the continuing  
30 care retirement community when a project is being  
31 developed in successive distinct phases over a period of  
32 time. When the services are provided in residents’ own  
33 homes, the homes into which the provider takes those  
34 services are considered part of the continuing care  
35 retirement community.

36 (12) “Control” means directing or causing the  
37 direction of the financial management or the policies of  
38 another entity, including an operator of a continuing care  
39 retirement community, whether by means of the  
40 controlling entity’s ownership interest, contract, or any



1 other involvement. A parent entity or sole member of an  
2 entity controls a subsidiary entity provider for a  
3 continuing care retirement community if its officers,  
4 directors, or agents directly participate in the  
5 management of the subsidiary entity or in the initiation  
6 or approval of policies that affect the continuing care  
7 retirement community's operations, including, but not  
8 limited to, approving budgets or the administrator for a  
9 continuing care retirement community.

10 (d) (1) "Department" means the State Department  
11 of Social Services.

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

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

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

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

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

37 (e) (1) "Elderly" means an individual who is 60 years  
38 of age or older.

39 (2) "Entity" means an individual, partnership,  
40 corporation, limited liability company, and any other



1 form for doing business. Entity includes a person, sole  
2 proprietorship, estate, trust, association, and joint  
3 venture.

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

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

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

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

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

38 (8) “Escrow agent” means a bank or institution,  
39 including, but not limited to, a title insurance company,



1 approved by the department to hold and render  
2 accountings for deposits of cash or cash equivalents.

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

8 (g) (reserved)

9 (h) (reserved)

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

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

14 (A) *Direct obligations of the United States, including*  
15 *obligations issued or held in book-entry form on the books*  
16 *of the United States Department of the Treasury or*  
17 *obligations the timely payment of the principal of, and*  
18 *the interest on, which are fully guaranteed by the United*  
19 *States.*

20 (B) *Obligations, debentures, notes, or other evidence*  
21 *of indebtedness issued or guaranteed by any of the*  
22 *following:*

23 (i) *The Federal Home Loan Bank System.*

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

25 (iii) *The Federal Financing Bank.*

26 (iv) *The Government National Mortgage Association.*

27 (v) *The Farmer’s Home Administration.*

28 (vi) *The Federal Home Loan Mortgage Corporation*  
29 *of the Federal Housing Administration.*

30 (vii) *Any agency, department, or other*  
31 *instrumentality of the United States if the obligations are*  
32 *rated in one of the two highest rating categories of each*  
33 *rating agency rating those obligations.*

34 (C) *Bonds of the State of California or of any county,*  
35 *city and county, or city in this state, if rated in one of the*  
36 *two highest rating categories of each rating agency rating*  
37 *those bonds.*

38 (D) *Commercial paper of finance companies and*  
39 *banking institutions rated in one of the two highest*  
40 *categories of each rating agency rating those instruments.*



1 (E) Repurchase agreements fully secured by  
2 collateral security described in subparagraphs (A) or (B),  
3 as evidenced by an opinion of counsel, if the collateral is  
4 held by the provider or a third party during the term of  
5 the repurchase agreement, pursuant to the terms of the  
6 agreement, subject to liens or claims of third parties, and  
7 has a market value, which is determined at least every 14  
8 days, at least equal to the amount so invested.

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

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

38 (i) The debt obligations of the savings and loan  
39 association, or in the case of a principal bank, of the bank  
40 holding company, are rated in one of the two highest



1 rating categories of each rating agency rating those  
2 instruments.

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

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

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

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

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

26 (K) Bonds not listed on a national exchange that are  
27 traded on an over-the-counter basis, and that are rated at  
28 least "Aa" by Moody's Investors Service or "AA" by  
29 Standard and Poor's Corporation or Fitch Investors  
30 Service.

31 (j) (reserved)

32 (k) (reserved)

33 (l) "Life care contract" means a continuing care  
34 contract that includes a promise, expressed or implied, by  
35 a provider to provide or pay for routine services at all  
36 levels of care, including acute care and the services of  
37 physicians and surgeons, to the extent not covered by  
38 other public or private insurance benefits, to a resident  
39 for the duration of his or her life. Care shall be provided  
40 under a life care contract in a continuing care retirement



1 community having a comprehensive continuum of care,  
2 including a skilled nursing facility, under the ownership  
3 and supervision of the provider on or adjacent to the  
4 premises. No change may be made in the monthly fee  
5 based on level of care. A life care contract shall also  
6 include provisions to subsidize residents who become  
7 financially unable to pay their monthly care fees.

8 (m) (1) “Monthly care fee” means the fee charged to  
9 a resident in a continuing care contract on a monthly or  
10 other periodic basis for current accommodations and  
11 services including care, board, or lodging. Periodic  
12 entrance fee payments or other prepayments shall not be  
13 monthly care fees.

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

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

19 (o) (reserved)

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

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

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

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

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

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



1 (7) “Promise to provide one or more elements of care”  
2 means any expressed or implied representation that one  
3 or more elements of care will be provided or will be  
4 available, such as by preferred access.

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

11 ~~(9) (A) “Provider” means any entity that provides~~  
12 ~~continuing care, makes a continuing care promise, or~~  
13 ~~proposes to promise to provide continuing care.~~

14 ~~(B) “Provider” also means any entity that controls an~~  
15 ~~entity described in subparagraph (A). The department~~  
16 ~~shall determine whether an entity controls another entity~~  
17 ~~for purposes of this article.~~

18 ~~(C) “Provider” shall not include a homeowner’s~~  
19 ~~association, cooperative, or condominium association.~~

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

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

36 (q) (reserved)

37 (r) (1) “Refund reserve” means the reserve a  
38 provider is required to maintain, ~~pursuant to~~ *as provided*  
39 *in Section 1793 1792.6.*



1 (2) “Refundable contract” means a continuing care  
2 contract that includes a promise, expressed or implied, by  
3 the provider to pay an entrance fee refund or to  
4 repurchase the transferor’s unit, membership, stock, or  
5 other interest in the continuing care retirement  
6 community when the promise to refund some or all of the  
7 initial entrance fee extends beyond the resident’s sixth  
8 year of residency. Providers that enter into refundable  
9 contracts shall be subject to the refund reserve  
10 requirements of Section ~~1793~~ 1792.6. A continuing care  
11 contract that includes a promise to repay all or a portion  
12 of an entrance fee that is conditioned upon reoccupancy  
13 or resale of the unit previously occupied by the resident  
14 shall not be considered a refundable contract for purposes  
15 of the refund reserve requirements of Section ~~1793~~ 1792.6,  
16 provided that this conditional promise of repayment is  
17 not referred to by the applicant or provider as a “refund.”

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

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

25 (5) “Resident” means a person who enters into a  
26 continuing care contract with a provider, or who is  
27 designated in a continuing care contract to be a person  
28 being provided or to be provided services, including care,  
29 board, or lodging.

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

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

35 (s) ~~(reserve)~~ (*Reserved*)

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

39 (2) “Transfer trauma” means death, depression, or  
40 regressive behavior, that is caused by the abrupt and



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

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

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

18 1771.2. (a) An entity shall be required to apply for  
19 and hold a currently valid permit to accept deposits  
20 before it may enter into a deposit agreement or accept a  
21 deposit.

22 (b) A provider shall hold a currently valid provisional  
23 certificate of authority or certificate of authority before  
24 it may enter into a continuing care contract.

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

36 (d) If an entity enters into an agreement to provide  
37 care for life or for more than one year to a person under  
38 60 years of age in return for consideration, and the  
39 agreement includes the provision of services to that  
40 person after age 60, when the person turns 60 years of age,



1 the promising entity shall comply with all the  
2 requirements imposed by this chapter.

3 SEC. 4. Section 1771.3 is added to the Health and  
4 Safety Code, to read:

5 1771.3. (a) This chapter shall not apply to either of  
6 the following:

7 (1) An arrangement for the care of a person by a  
8 relative.

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

11 (b) This chapter shall not apply to any admission or  
12 residence agreements offered by residential  
13 communities for the elderly or residential care facilities  
14 for the elderly that promise residents preferred access to  
15 assisted living or nursing care, when ~~all of the following~~  
16 ~~conditions exist:~~ *each of the following conditions is*  
17 *satisfied:*

18 (1) Residents pay on a fee-for-service basis for  
19 available assisted living and nursing care.

20 (2) The fees paid for available assisted living and  
21 nursing care are the same for residents who have  
22 previously occupied a residential living unit as for  
23 residents who have not previously occupied a residential  
24 living unit.

25 (3) No entrance fee or prepayment for future care or  
26 access, other than monthly care fees, is paid by, or  
27 charged to, any resident at the community or facility. For  
28 purposes of this paragraph, the term entrance fee shall  
29 not include initial, deferred, or amortized payments that  
30 cumulatively do not exceed seven thousand five hundred  
31 dollars (\$7,500).

32 (4) The provider has not made a continuing care  
33 promise *of preferred access*, other than a promise as  
34 described in paragraph (5).

35 (5) ~~(A)~~The admission or residence agreement states:

36

37 ~~“This~~

38 (A) *“This* agreement does not guarantee that an  
39 assisted living or nursing bed will be available for  
40 residents, but, instead, promises preferred access to any



1 assisted living or nursing beds that are available at the  
2 community or facility. The promise of preferred access  
3 gives residents who have previously occupied a  
4 residential living unit a right over other persons to such  
5 beds.”

6 ~~“A~~

7 (B) “A continuing care contract promises that care  
8 will be provided to residents for life or for a term in excess  
9 of a year. (Name of community or facility) is not a  
10 continuing care retirement community and (name of  
11 provider) does not hold a certificate of authority to enter  
12 into continuing care contracts and is not required to have  
13 the same fiscal reserves as a continuing care provider.  
14 This agreement is not a continuing care contract and is  
15 exempted from the continuing care statutes under  
16 subdivision (b) of Section 1771.3 of the Health and Safety  
17 Code so long as the conditions set forth in that section are  
18 met.”

19

20 ~~(B) The admission or residence agreement shall also~~  
21 ~~contain the policies and procedures regarding transfers to~~  
22 ~~higher levels of care within the community or facility.~~

23 ~~(e) (1) Any entity may apply to the department for a~~  
24 ~~Letter of Exemption pursuant to subdivision (b). The~~  
25 ~~application for exemption shall state that the requesting~~  
26 ~~entity satisfies the requirements for an exemption under~~  
27 ~~this section.~~

28 ~~(2) An application to the department for a Letter of~~  
29 ~~Exemption shall be required to include all of the~~  
30 ~~following:~~

31 ~~(A) A nonrefundable one thousand dollar (\$1,000)~~  
32 ~~application fee.~~

33 ~~(B) The name and business address of the applicant.~~

34 ~~(C) A description of the services and care available or~~  
35 ~~provided to residents of the community or facility.~~

36 ~~(D) Documentation establishing that the requesting~~  
37 ~~entity satisfies the requirements for an exemption under~~  
38 ~~subdivision (b), including all of the following:~~

39 ~~(i) A schedule showing all fees for assisted living and~~  
40 ~~skilled nursing care charged to residents at the facility or~~



1 ~~community who have previously occupied a residential~~  
2 ~~living unit.~~

3 ~~(ii) A schedule showing all fees for assisted living and~~  
4 ~~skilled nursing care charged to residents at the facility or~~  
5 ~~community who have not previously occupied a~~  
6 ~~residential living unit.~~

7 ~~(iii) A description of the differences between the fees~~  
8 ~~for assisted living and skilled nursing care charged to~~  
9 ~~residents who have previously occupied a residential unit~~  
10 ~~and the fees for assisted living and skilled nursing care~~  
11 ~~charged to residents who have not previously occupied a~~  
12 ~~residential unit.~~

13 ~~(iv) A schedule showing any other fees charged to~~  
14 ~~residents of the community or facility.~~

15 ~~(v) Copies of all admission and residence agreement~~  
16 ~~forms that have been entered into, or will be entered into,~~  
17 ~~with residents at the community or facility.~~

18 ~~(vi) Any other information reasonably requested by~~  
19 ~~the department.~~

20 ~~(d) The department shall issue a Letter of Exemption~~  
21 ~~pursuant to subdivision (c) to a requesting entity if the~~  
22 ~~department determines that either of the following~~  
23 ~~conditions are met:~~

24 ~~(1) The requesting entity satisfies each of the~~  
25 ~~requirements for an exemption under subdivision (b).~~

26 ~~(2) The requesting entity satisfies each of the~~  
27 ~~requirements for an exemption under subdivision (b)~~  
28 ~~other than the requirements of paragraph (2) of~~  
29 ~~subdivision (b), and there is no substantial difference~~  
30 ~~between the fees for available assisted living and skilled~~  
31 ~~nursing care paid by residents who have previously~~  
32 ~~occupied a residential living unit, and the fees for~~  
33 ~~available assisted living and skilled nursing care paid by~~  
34 ~~residents who have not previously occupied a residential~~  
35 ~~living unit.~~

36 ~~(e) If, at any time, a provider that has received a~~  
37 ~~Letter of Exemption pursuant to subdivision (c) no~~  
38 ~~longer meets any of the requirements for that exemption,~~  
39 ~~the requirements of this chapter shall apply, and the~~  
40 ~~department may impose appropriate remedies and~~



1 ~~penalties as set forth in Article 7 (commencing with~~  
2 ~~Section 1793.5).~~

3 (6) *The admission or residence agreement also states*  
4 *the policies and procedures regarding transfers to higher*  
5 *levels of care within the community or facility.*

6 (c) *Any entity may apply to the department for a*  
7 *Letter of Exemption stating that the requesting entity*  
8 *satisfies the requirements for an exemption under this*  
9 *section.*

10 (d) *The department shall issue a Letter of Exemption*  
11 *to a requesting entity if the department determines*  
12 *either of the following:*

13 (1) *The requesting entity satisfies each of the*  
14 *requirements for an exemption under subdivision (b).*

15 (2) *The requesting entity satisfies each of the*  
16 *requirements for an exemption under subdivision (b)*  
17 *other than the requirements of paragraph (2) of*  
18 *subdivision (b), and there is no substantial difference*  
19 *between the following:*

20 (A) *The fees for available assisted living and skilled*  
21 *nursing care paid by residents who have previously*  
22 *occupied a residential living unit.*

23 (B) *The fees for available assisted living and skilled*  
24 *nursing care paid by residents who have not previously*  
25 *occupied a residential living unit.*

26 (e) *An application to the department for a Letter of*  
27 *Exemption shall include all of the following:*

28 (1) *A nonrefundable one thousand dollar (\$1,000)*  
29 *application fee.*

30 (2) *The name and business address of the applicant.*

31 (3) *A description of the services and care available or*  
32 *provided to residents of the community or facility.*

33 (4) *Documentation establishing that the requesting*  
34 *entity satisfies the requirements for an exemption under*  
35 *this section, including all of the following:*

36 (A) *A schedule showing all fees for assisted living and*  
37 *skilled nursing care charged to residents at the facility or*  
38 *community who have previously occupied a residential*  
39 *living unit.*



1 (B) A schedule showing all fees for assisted living and  
2 skilled nursing care charged to residents at the facility or  
3 community who have not previously occupied a  
4 residential living unit.

5 (C) A description of the differences between the fees  
6 for assisted living and skilled nursing care charged to  
7 residents who have not previously occupied a residential  
8 unit and the fees for assisted living and skilled nursing  
9 care charged to residents who have not previously  
10 occupied a residential unit.

11 (D) A schedule showing any other fees charged to  
12 residents of the community or facility.

13 (E) Copies of all admission and residence agreement  
14 forms that have been entered into, or will be entered into,  
15 with residents at the community or facility.

16 (5) Any other information reasonably requested by  
17 the department.

18 (f) If at any time any of the conditions stated in this  
19 section are not satisfied, then the requirements of this  
20 chapter apply, and the department may impose  
21 appropriate remedies and penalties set forth in Article 7  
22 (commencing with Section 1793.5).

23 SEC. 5. Section 1771.4 of the Health and Safety Code  
24 is repealed.

25 SEC. 6. Section 1771.4 is added to the Health and  
26 Safety Code, to read:

27 1771.4. An entity may conduct a market test for a  
28 proposed continuing care retirement community and  
29 collect reservation fees from persons interested in  
30 residing at the proposed continuing care retirement  
31 community without violating this chapter if all of the  
32 following conditions are met:

33 (a) The entity has filed with the department an  
34 application for a permit to accept deposits and for a  
35 certificate of authority for the project.

36 (b) The entity's application includes the proposed  
37 reservation agreement form and a proposed escrow  
38 agreement that provides all of the following:

39 (1) All fees shall be deposited in escrow.



1 (2) Refunds shall be made within 10 calendar days  
2 after the proposed resident's request or 10 days after  
3 denial of the application for a permit to accept deposits.

4 (3) All fees shall be converted to deposits within 15  
5 days after a permit to accept deposits is issued.

6 (c) The department has acknowledged in writing its  
7 receipt of the entity's application and its approval of the  
8 entity's proposed reservation agreement between the  
9 payer and the entity and the escrow agreement between  
10 the escrow holder and the entity.

11 (d) The amount of any reservation fee collected by the  
12 entity does not exceed one thousand dollars (\$1,000) or 1  
13 percent of the average entrance fee amount as  
14 determined from the entity's application, whichever is  
15 greater.

16 (e) All reservation fees collected by the entity are  
17 placed into an escrow under the terms of the approved  
18 reservation agreement and escrow agreement.

19 (f) The reservation agreement and escrow agreement  
20 provide that the payer shall be entitled to a refund within  
21 10 calendar days after making a request for a refund and  
22 within 10 calendar days after any denial of the entity's  
23 application for a permit to accept deposits.

24 (g) The reservation agreement and escrow  
25 agreement provide that the payer's reservation fee shall  
26 be converted into a deposit within 15 days after the  
27 entity's permit to accept deposits is issued.

28 SEC. 7. Section 1771.5 of the Health and Safety Code  
29 is repealed.

30 SEC. 8. Section 1771.5 is added to the Health and  
31 Safety Code, to read:

32 1771.5. The department shall not issue a provisional  
33 certificate of authority or a certificate of authority to an  
34 applicant until the applicant has obtained licenses for the  
35 entire continuing care retirement community, including  
36 a license to operate the residential living and assisted  
37 living units, pursuant to Chapter 3.2 (commencing with  
38 Section 1569) and if a skilled nursing facility is on the  
39 premises, a license for the facility pursuant to Chapter 2  
40 (commencing with Section 1250).



1 SEC. 9. Section 1771.6 of the Health and Safety Code  
2 is repealed.

3 SEC. 10. Section 1771.6 is added to the Health and  
4 Safety Code, to read:

5 1771.6. (a) Any entity may apply to the department  
6 for a Letter of Nonapplicability for reasons other than  
7 those specified in Section 1771.3, which states that the  
8 provisions of this chapter do not apply to its community,  
9 project, or proposed project.

10 (b) Applications for Letters of Nonapplicability shall  
11 be made to the department in writing and include the  
12 following:

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

15 (2) A list of the reasons why the existing or proposed  
16 project may not be subject to this chapter.

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

19 (4) Copies of all advertising material.

20 (5) Any other information reasonably requested by  
21 the department.

22 ~~(e) The department shall within seven calendar days  
23 after receipt of the request for a Letter of  
24 Nonapplicability, acknowledge receipt of the request.  
25 The department shall within 30 calendar days after all  
26 materials are received in support of the request, either  
27 issue the Letter of Nonapplicability, or notify the entity  
28 of the department's reasons for denial of the request.~~

29 *(c) The department shall do both of the following:*

30 *(1) Within seven calendar days, acknowledge receipt  
31 of the request for a Letter of Nonapplicability.*

32 *(2) Within 30 calendar days after all materials are  
33 received, either issue the Letter of Nonapplicability, or  
34 notify the entity of the department's reasons for denial of  
35 the request.*

36 (d) *(1)* If the department determines that the entity  
37 does not qualify for a Letter of Nonapplicability, the  
38 entity shall refrain from, or immediately cease, entering  
39 into continuing care contracts. ~~ff~~



1 (2) *If* an entity to which this subdivision applies  
2 intends to provide continuing care, an application for a  
3 certificate of authority shall be required to be filed with  
4 the department pursuant to this chapter. ~~If the~~

5 (3) *If an* entity to which this subdivision applies does  
6 not intend to provide continuing care, it shall alter its plan  
7 of operation so that the project is not subject to this  
8 chapter. To obtain a Letter of Nonapplicability for the  
9 revised project, the entity shall submit a new application  
10 and fee.

11 SEC. 11. Section 1771.7 of the Health and Safety Code  
12 is repealed.

13 SEC. 12. Section 1771.7 is added to the Health and  
14 Safety Code, to read:

15 1771.7. (a) No resident of any continuing care  
16 retirement community shall be deprived of any civil or  
17 legal right, benefit, or privilege guaranteed by law, by the  
18 California Constitution, or by the United States  
19 Constitution solely by reason of status as a resident of a  
20 community. In addition, because of the discretely  
21 different character of residential living unit programs  
22 that are a part of continuing care retirement  
23 communities, this section shall augment Chapter 3.9  
24 (commencing with Section 1599), Section 73523 of Title  
25 22 of the California Code of Regulations, and applicable  
26 federal law and regulations.

27 (b) All residents in residential living units shall have all  
28 of the following rights:

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

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

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

36 (4) To expect effective channels of communication  
37 between residents and staff, and between residents and  
38 the administration or provider's governing body.

39 (5) To receive a clear and complete written contract  
40 that establishes the mutual rights and obligations of the



1 resident and the ~~provider~~ *continuing care retirement*  
2 *community*.

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

5 ~~(e) A provider shall maintain an environment that~~  
6 ~~enhances the residents' self-determination and~~  
7 ~~independence. The provider shall permit the formation~~  
8 ~~of a resident association by interested residents, who may~~  
9 ~~elect a governing body. The provider shall permit the~~  
10 ~~association to have space and post notices for meetings.~~  
11 ~~The provider shall provide assistance in attending~~  
12 ~~meetings for those residents who request it. In order to~~  
13 ~~permit a free exchange of ideas, at least part of each~~  
14 ~~meeting shall be conducted without the presence of any~~  
15 ~~provider personnel. The association may, among other~~  
16 ~~things, make recommendations to management~~  
17 ~~regarding resident issues that impact their quality of life.~~  
18 ~~Meetings shall be open to all residents, and all residents~~  
19 ~~may present issues. Executive sessions of the association's~~  
20 ~~governing body shall be attended only by the governing~~  
21 ~~body.~~

22 ~~(d) A continuing care retirement provider shall~~  
23 ~~establish policies and procedures that promote the~~  
24 ~~sharing of information, dialogue between residents and~~  
25 ~~management, and access to the provider's governing~~  
26 ~~body. The policies and procedures shall be evaluated, at~~  
27 ~~a minimum, every two years by the provider to~~  
28 ~~determine their effectiveness in maintaining meaningful~~  
29 ~~resident/management relations.~~

30 ~~(c) A continuing care retirement community shall~~  
31 ~~maintain an environment that enhances the residents'~~  
32 ~~self-determination and independence. The provider shall~~  
33 ~~do both of the following:~~

34 ~~(1) Permit the formation of a resident association by~~  
35 ~~interested residents who may elect a governing body. The~~  
36 ~~provider shall provide space and post notices for~~  
37 ~~meetings, and provide assistance in attending meetings~~  
38 ~~for those residents who request it. In order to permit a~~  
39 ~~free exchange of ideas, at least part of each meeting shall~~  
40 ~~be conducted without the presence of any continuing~~



1 care retirement community personnel. The association  
2 may, among other things, make recommendations to  
3 management regarding resident issues that impact the  
4 residents' quality of life. Meetings shall be open to all  
5 residents to attend as well as to present issues. Executive  
6 sessions of the governing body shall be attended only by  
7 the governing body.

8 (2) Establish policies and procedures that promote the  
9 sharing of information, dialogue between residents and  
10 management, and access to the provider's governing  
11 body. The policies and procedures shall be evaluated at  
12 a minimum of every two years by the continuing care  
13 retirement community administration to determine their  
14 effectiveness in maintaining meaningful  
15 resident-management relations.

16 (d) In addition to any statutory or regulatory bill of  
17 rights required to be provided to residents of residential  
18 care facilities for the elderly or skilled nursing facilities,  
19 the provider shall provide a copy of the bill of rights  
20 prescribed by this section to each resident at or before the  
21 resident's admission to the community.

22 (e) The department may, upon receiving a complaint  
23 of a violation of this section, request a copy of the policies  
24 and procedures along with documentation on the  
25 conduct and findings of any self-evaluations and consult  
26 with the Continuing Care Advisory Committee for  
27 determination of compliance.

28 ~~(e)~~

29 (f) Failure to comply with this section shall be grounds  
30 for suspension, condition, or revocation of the provisional  
31 certificate of authority or certificate of authority pursuant  
32 to Section 1793.21.

33 SEC. 13. Section 1771.8 of the Health and Safety Code  
34 is repealed.

35 SEC. 14. Section 1771.9 of the Health and Safety Code  
36 is amended and renumbered to read:

37 1771.8. (a) The Legislature finds and declares all of  
38 the following:

39 (1) The residents of continuing care retirement  
40 communities have a unique and valuable perspective on



1 the operations of and services provided in the community  
2 in which they live.

3 (2) Resident input into decisions made by the provider  
4 is an important factor in creating an environment of  
5 cooperation, reducing conflict, and ensuring timely  
6 response and resolution to issues that may arise.

7 (3) Continuing care retirement communities are  
8 strengthened when residents know that their views are  
9 heard and respected.

10 (b) The Legislature encourages continuing care  
11 retirement communities to exceed the minimum  
12 resident participation requirements established by this  
13 section by, among other things, the following:

14 (1) Encouraging residents to form a resident  
15 association, and assisting the residents, the resident  
16 association, and its governing body to keep informed  
17 about the operation of the continuing care retirement  
18 community.

19 (2) Encouraging residents of a continuing care  
20 retirement community or their elected representatives  
21 to select residents to participate as board members of the  
22 governing body of the provider.

23 (3) Quickly and fairly resolving any dispute, claim, or  
24 grievance arising between a resident and the continuing  
25 care retirement community.

26 (c) The governing body of a provider, or the  
27 designated representative of the provider, shall hold, at  
28 a minimum, semiannual meetings with the residents of  
29 the continuing care retirement community, or the  
30 resident association or its governing body, for the purpose  
31 of the free discussion of subjects including, but not limited  
32 to, income, expenditures, and financial trends and issues  
33 as they apply to the continuing care retirement  
34 community and proposed changes in policies, programs,  
35 and services. Nothing in this section precludes a provider  
36 from taking action or making a decision at any time,  
37 without regard to the meetings required under this  
38 subdivision.

39 (d) At least 30 days prior to the implementation of any  
40 increase in the monthly care fee, the designated



1 representative of the provider shall convene a meeting,  
2 to which all residents shall be invited, for the purpose of  
3 discussing the reasons for the increase, the basis for  
4 determining the amount of the increase, and the data  
5 used for calculating the increase. This meeting may  
6 coincide with the semiannual meetings provided for in  
7 subdivision (c).

8 (e) The governing body of a provider, or the  
9 designated representative of the provider shall provide  
10 residents with at least 14 days' advance notice of each  
11 meeting provided for in subdivisions (c) and (d). The  
12 governing body of a provider, or the designated  
13 representative of the provider shall post the notice of, and  
14 the agenda for, the meeting in a conspicuous place in the  
15 *continuing care retirement* community at least 14 days  
16 prior to the meeting. The governing body of a provider,  
17 or the designated representative of the provider shall  
18 make available to residents of the continuing care  
19 retirement community upon request the agenda and  
20 accompanying materials at least seven days prior to the  
21 meeting.

22 (f) Each provider shall make available to the resident  
23 association or its governing body, or if neither exists, to a  
24 committee of residents, a financial statement of activities  
25 comparing actual costs to budgeted costs broken down by  
26 expense category, not less than semiannually, and shall  
27 consult with the resident association or its governing  
28 body, or if neither exists to a committee of residents,  
29 during the annual budget planning process.

30 (g) Each provider shall, within 10 days after the annual  
31 report required pursuant to Section 1790 is submitted to  
32 the department, provide, at a central and conspicuous  
33 location in the community, a copy of the annual report,  
34 including a copy of the annual audited financial  
35 statement, but excluding personal confidential  
36 information.

37 (h) Each provider shall maintain, as public  
38 information, available upon request to residents,  
39 prospective residents, and the public, minutes of the  
40 board of director's meetings and shall retain these records



1 for at least three years from the date the records were  
2 filed or issued.

3 (i) The governing body of a provider that is not part  
4 of a multifacility organization with more than one  
5 continuing care retirement community in the state shall  
6 accept at least one resident of the continuing care  
7 retirement community it operates to participate as a  
8 nonvoting resident representative to the provider's  
9 governing body.

10 (j) In a multifacility organization having more than  
11 one continuing care retirement community in the state,  
12 the governing body of the multifacility organization shall  
13 elect either to have at least one nonvoting resident  
14 representative to the provider's governing body for each  
15 California-based continuing care retirement community  
16 the provider operates or to have a resident-elected  
17 committee composed of representatives of the residents  
18 of each California-based continuing care retirement  
19 community that the provider operates select or nominate  
20 at least one nonvoting resident representative to the  
21 provider's governing body for every three  
22 California-based continuing care retirement  
23 communities or fraction thereof that the provider  
24 operates.

25 (k) In order to encourage innovative and alternative  
26 models of resident involvement, a resident selected  
27 pursuant to subdivision (i) to participate as a resident  
28 representative to the provider's governing body may, at  
29 the option of the resident association, be selected in any  
30 one of the following ways:

31 (1) By a majority vote of the resident association of a  
32 provider or by a majority vote of a resident-elected  
33 committee of residents of a multifacility organization.

34 (2) If no resident association exists, any resident may  
35 organize a meeting of the majority of the residents of the  
36 continuing care retirement community to select or  
37 nominate residents to represent them before the  
38 governing body.

39 (3) Any other method designated by the resident  
40 association.



1 (l) The resident association, or organizing resident, or  
2 in the case of a multifacility organization, the  
3 resident-elected committee of residents, shall give  
4 residents of the continuing care retirement community  
5 at least 30 days' advance notice of the meeting to select  
6 a resident representative and shall post the notice in a  
7 conspicuous place at the continuing care retirement  
8 community.

9 (m) Except as provided in subdivision (n), the  
10 resident representative shall receive the same notice of  
11 board meetings, board packets, minutes, and other  
12 materials as members and shall be permitted to attend,  
13 speak, and participate in all meetings of the board.

14 (n) Notwithstanding subdivision (m), the governing  
15 body may exclude resident representatives from its  
16 executive sessions and from receiving board materials to  
17 be discussed during executive session. However, resident  
18 representatives shall be included in executive sessions  
19 and shall receive all board materials to be discussed  
20 during executive sessions related to discussions of the  
21 annual budgets, increases in monthly care fees,  
22 indebtedness, and expansion of new and existing  
23 continuing care retirement communities.

24 (o) The provider shall pay all reasonable travel costs  
25 for the resident representative.

26 (p) The provider shall disclose in writing the extent of  
27 resident involvement with the board to prospective  
28 residents.

29 (q) Nothing in this section prohibits a provider from  
30 exceeding the minimum resident participation  
31 requirements of this section by, for example, having more  
32 resident meetings or more resident representatives to the  
33 board than required or by having one or more residents  
34 on the provider's governing body who are selected with  
35 the active involvement of residents.

36 (r) On or before January 1, 2001, the Continuing Care  
37 Advisory Committee of the department established  
38 pursuant to Section 1777 shall evaluate and report to the  
39 Legislature on the implementation of this section.

1 SEC. 15. Section 1771.11 of the Health and Safety  
2 Code is amended and renumbered to read:

3 1771.10. Each provider shall adopt a comprehensive  
4 disaster preparedness plan specifying policies for  
5 evacuation, relocation, continued services,  
6 reconstruction, organizational structure, insurance  
7 coverage, resident education, and plant replacement.

8 SEC. 16. Section 1772 of the Health and Safety Code  
9 is amended to read:

10 1772. (a) No report, circular, public announcement,  
11 certificate, financial statement, or any other printed  
12 matter or advertising material, or oral representation,  
13 that states or implies that an entity sponsors, guarantees,  
14 or ~~ensures~~ *assures* the performance of any continuing  
15 care contract, shall be published or presented to any  
16 prospective resident unless both of the following have  
17 been met:

18 (1) Paragraph (5) of subdivision (a) of Section 1788  
19 applies and the requirements of that paragraph have  
20 been satisfied.

21 (2) The entity files with the department a duly  
22 authorized and executed written declaration that it  
23 accepts full financial responsibility for each continuing  
24 care contract. The filing entity shall be subject to the  
25 application requirements set forth in Article 2  
26 (commencing with Section 1779), shall be a coobligor for  
27 the subject contracts, and shall be a coprovider on the  
28 applicable provisional certificate of authority and  
29 certificate of authority.

30 (b) Implied sponsorship includes the use of the entity's  
31 name for the purpose of implying that the entity's  
32 reputation may be relied upon to ensure the performance  
33 of the continuing care contract.

34 (c) Any implication that the entity may be financially  
35 responsible for these contracts may be rebutted by a  
36 conspicuous statement, in all continuing care contracts  
37 and marketing materials, that clearly discloses to  
38 prospective residents and all transferors that the entity is  
39 not financially responsible.



1 (d) On written appeal to the department, and for good  
2 cause shown, the department may, in its discretion, allow  
3 an affinity group exemption from this section. If an  
4 exemption is granted, every continuing care contract  
5 shall include a conspicuous statement which clearly  
6 discloses to prospective residents and all transferors that  
7 the affinity group entity is not financially responsible.

8 (e) If the name of an entity, including, but not limited  
9 to, a religion, is used in connection with the development,  
10 marketing, or continued operation of a continuing care  
11 retirement community, but that entity does not actually  
12 own, control, manage, or otherwise operate the  
13 continuing care retirement community, the provider  
14 shall clearly disclose the absence of that affiliation,  
15 involvement, or association with the continuing care  
16 retirement community in the continuing care contract.

17 SEC. 17. Section 1772.2 is added to the Health and  
18 Safety Code, to read:

19 1772.2. (a) All printed advertising materials,  
20 including brochures, circulars, public announcements,  
21 and similar publications pertaining to continuing care or  
22 a continuing care retirement community shall specify the  
23 number on the provider's provisional certificate of  
24 authority or certificate of authority.

25 (b) If the provider has not been issued a certificate of  
26 authority, all advertising materials shall specify ~~whether~~  
27 *both of the following:*

28 (1) *Whether* an application has been ~~filed and, if filed,~~

29 (2) *If* applicable, that a permit to accept deposits, or a  
30 provisional certificate of authority has been issued.

31 SEC. 18. Section 1773 of the Health and Safety Code  
32 is amended to read:

33 1773. (a) A provisional certificate of authority or  
34 certificate of authority may not be sold, transferred, or  
35 exchanged in any manner. A provider may not sell or  
36 transfer ownership of the continuing care retirement  
37 community without the approval of the department. Any  
38 violation of this section shall cause the applicable  
39 provisional certificate of authority or certificate of



1 authority to be forfeited by operation of law pursuant to  
2 subdivision (c) of Section 1793.7.

3 (b) A provider may not enter into a contract with a  
4 third party for overall management of the continuing  
5 care retirement community without the approval of the  
6 department. The department shall review the  
7 transaction for consistency with this chapter.

8 (c) Any violation of this section shall be grounds for  
9 revocation for the provider’s provisional certificate of  
10 authority or certificate of authority under Section 1793.21.

11 SEC. 19. Section 1774 of the Health and Safety Code  
12 is amended to read:

13 1774. No arrangement allowed by a permit to accept  
14 deposits, a provisional certificate or authority, or a  
15 certificate of authority issued by the department under  
16 this chapter may be deemed a security for any purpose.

17 SEC. 20. Section 1775 of the Health and Safety Code  
18 is amended to read:

19 1775. (a) To the extent that this chapter, as  
20 interpreted by the department, conflicts with the  
21 statutes, regulations, or interpretations governing the  
22 sale or hire of real property, this chapter shall prevail.

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

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



1 (d) This chapter imposes minimum requirements  
2 upon any entity promising to provide, proposing to  
3 promise to provide, or providing continuing care.

4 (e) This chapter shall be liberally construed for the  
5 protection of persons attempting to obtain or receiving  
6 continuing care.

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

14 SEC. 21. Section 1776.6 of the Health and Safety Code  
15 is amended to read:

16 1776.6. (a) Pursuant to the California Public Records  
17 Act (Chapter 3.5 (commencing with Section 6250) of  
18 Division 7 of Title 1 of the Government Code) and the  
19 Information Practices Act of 1977 (Chapter 1  
20 (commencing with Section 1798) of Title 1.8 of Part 4 of  
21 Division 3 of the Civil Code), the following documents  
22 are public information and shall be provided by the  
23 department upon request: audited financial statements,  
24 annual reports and accompanying documents,  
25 compliance or noncompliance with reserve  
26 requirements, whether an application for a permit to  
27 accept deposits and certificate of authority has been filed,  
28 whether a permit or certificate has been granted or  
29 denied, and the type of care offered by the provider.

30 (b) The department shall regard resident data used in  
31 the calculation of reserves as confidential.

32 SEC. 22. Section 1777 of the Health and Safety Code  
33 is amended to read:

34 1777. (a) The Continuing Care Advisory Committee  
35 of the department shall act in an advisory capacity to the  
36 department on matters relating to continuing care  
37 contracts.

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

39 (1) Three representatives of nonprofit continuing  
40 care providers pursuant to this chapter, each of whom



1 shall have offered continuing care services for at least five  
2 years prior to appointment. One member shall represent  
3 a multifacility provider and shall be appointed by the  
4 Governor in even years. One member shall be appointed  
5 by the Senate Committee on Rules in odd years. One  
6 member shall be appointed by the Speaker of the  
7 Assembly in odd years.

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

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

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

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

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

37 (d) The members of the committee shall serve  
38 without compensation, except that each member shall be  
39 paid from the Continuing Care Provider Fee Fund a per  
40 diem of twenty-five dollars (\$25) for each day's



1 attendance at a meeting of the committee not to exceed  
2 six days in any month. The members of the committee  
3 shall also receive their actual and necessary travel  
4 expenses incurred in the course of their duties.  
5 Reimbursement of travel expenses shall be at rates not to  
6 exceed those applicable to comparable state employees  
7 under Department of Personnel Administration  
8 regulations.

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

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

20 SEC. 23. Section 1777.2 of the Health and Safety Code  
21 is amended to read:

22 1777.2. (a) The Continuing Care Advisory  
23 Committee shall:

24 (1) Review the financial and managerial condition of  
25 continuing care retirement communities operating  
26 under a certificate of authority.

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

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

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

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



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

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

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

16 SEC. 24. Section 1777.4 of the Health and Safety Code  
 17 is amended to read:

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

26 SEC. 25. Section 1779 of the Health and Safety Code  
 27 is amended to read:

28 1779. (a) An entity shall file an application for a  
 29 permit to accept deposits and for ~~certificates~~ a *certificate*  
 30 of authority with the department, as set forth in this  
 31 chapter, before doing any of the following:

32 (1) Accepting any deposit, reservation fee, or any  
 33 other payment that is related to a promise or proposal to  
 34 promise to provide continuing care.

35 (2) Entering into any reservation agreement, deposit  
 36 agreement, or continuing care contract.

37 (3) Commencing construction of a prospective  
 38 continuing care retirement community. If the project is  
 39 to be constructed in phases, the application shall include  
 40 all planned phases.



1 (4) Expanding an existing continuing care retirement  
2 community whether by converting existing buildings or  
3 by new construction.

4 (5) Converting an existing structure to a continuing  
5 care retirement community.

6 (6) Recommencing marketing on a planned  
7 continuing care retirement community when the  
8 applicant has previously forfeited a permit to accept  
9 deposits pursuant to Section 1703.7.

10 (7) Executing new continuing care contracts after a  
11 provisional certificate of authority or certificate of  
12 authority has been inactivated, revoked, surrendered, or  
13 forfeited.

14 (8) Closing the sale or transfer of a continuing care  
15 retirement community or assuming responsibility for  
16 continuing care contracts.

17 (b) For purposes of paragraph (4) of subdivision (a),  
18 an expansion of a continuing care retirement community  
19 shall be deemed to occur when ~~any of the following~~  
20 ~~occurs:~~

21 ~~(1) An increase in the capacity stated on the~~  
22 ~~residential care facility for the elderly license issued to the~~  
23 ~~continuing care retirement community.~~

24 ~~(2) An increase in the number of units at the~~  
25 ~~continuing care retirement community.~~

26 ~~(3) An increase in the number of skilled nursing beds,~~  
27 ~~or additions to, or replacement of, existing continuing~~  
28 ~~care retirement community structures that may affect~~  
29 ~~obligations to current residents. *there is an increase in the*~~  
30 ~~*capacity stated on the residential care facility for the*~~  
31 ~~*elderly license issued to the continuing care retirement*~~  
32 ~~*community, an increase in the number of units at the*~~  
33 ~~*continuing care retirement community, an increase in*~~  
34 ~~*the number of skilled nursing beds, or additions to or*~~  
35 ~~*replacement of existing continuing care retirement*~~  
36 ~~*community structures that may affect obligations to*~~  
37 ~~*current residents.*~~

38 (c) Any provider that alters, or proposes to alter, its  
39 organization, including by means of a change in the type  
40 of entity it is, separation from another entity, merger,



1 affiliation, spinoff, or sale, shall file a new application and  
2 obtain a new certificate of authority before the new entity  
3 may enter into any new continuing care contracts.

4 (d) A new application shall not be required for an  
5 entity name change if there is no change in the entity  
6 structure or management. If the provider undergoes a  
7 name change, the provider shall notify the department in  
8 writing of the name change and shall return the  
9 previously issued certificate of authority for reissuance  
10 under the new name.

11 (e) Within 10 days of submitting an application for a  
12 certificate of authority pursuant to paragraph (3), (4),  
13 (7), or (8) of subdivision (a), the provider shall notify  
14 residents of the provider's existing community or  
15 communities of its application. The provider shall notify  
16 its resident associations of any filing with the department  
17 to obtain new financing, additional financing for a  
18 continuing care retirement community, the sale or  
19 transfer of a continuing care retirement community, any  
20 change in structure, and of any applications to the  
21 department for any expansion of a continuing care  
22 retirement community. A summary of the plans and  
23 application shall be posted in a prominent location in the  
24 continuing care retirement community so as to be  
25 accessible to all residents and the general public,  
26 indicating in the summary where the full plans and  
27 application may be inspected in the continuing care  
28 retirement community.

29 (f) When the department determines that it has  
30 sufficient information on the provider or determines that  
31 the provisions do not apply and the protections provided  
32 by this article are not compromised, the department may  
33 eliminate all or portions of the application contents  
34 required under Section 1779.4 for applications filed  
35 pursuant to paragraphs (4), (5), (6), (7), and (8) of  
36 subdivision (a) or pursuant to subdivision (c).

37 SEC. 26. Section 1779.2 of the Health and Safety Code  
38 is amended to read:



1 1779.2. (a) Any entity filing an application for a  
2 permit to accept deposits ~~or~~ and a certificate of authority  
3 shall pay an application fee.

4 (b) The applicant shall pay 80 percent of the  
5 application fee for all planned phases at the time the  
6 applicant submits its application. The 80 percent  
7 payment shall be made by check payable to the  
8 Continuing Care Provider Fee Fund. The department  
9 shall not process the application until it has received this  
10 fee.

11 (c) For new continuing care retirement communities  
12 or for the sale or transfer of existing continuing care  
13 retirement communities, the application fee shall be  
14 calculated as one-tenth of 1 percent of the purchase price  
15 of the continuing care retirement community, or the  
16 estimated construction cost, including the purchase price  
17 of the land or the present value of any long-term lease and  
18 all items listed in subparagraph (D) of paragraph (2) of  
19 subdivision (y) of Section 1779.4.

20 ~~(1)~~

21 (d) For existing continuing care retirement  
22 communities that are proposing new phases, remodeling  
23 or an expansion, the application fee shall be calculated as  
24 one-tenth of 1 percent of the cost of the addition,  
25 annexation, or renovation, including the value of the land  
26 and improvements and all items listed in subparagraph  
27 (D) of paragraph (2) of subdivision (y) of Section 1779.4.

28 ~~(2)~~

29 (e) For existing facilities converting to continuing  
30 care retirement communities, the application fee shall be  
31 calculated as one-tenth of 1 percent of the current  
32 appraised value of the facility, including the land, or  
33 present value of any long-term lease.

34 ~~(3)~~

35 (f) For organizational changes, the application fee  
36 shall be determined by the department based on the time  
37 and resources it considers reasonably necessary to process  
38 the application, including any consultant fees. The  
39 minimum application fee for those applications shall be  
40 two thousand dollars (\$2,000).



1 ~~(d)~~

2 (g) The applicant shall pay the remainder of the  
3 application fee before the provisional certificate of  
4 authority is issued, or in the case of expansions or  
5 remodeling, before final approval of the project is  
6 granted. The applicant shall make this payment by check  
7 payable to the Continuing Care Provider Fee Fund.

8 SEC. 27. Section 1779.4 of the Health and Safety Code  
9 is amended to read:

10 1779.4. An application shall contain all of the  
11 following:

12 (a) A statement signed by the applicant under penalty  
13 of perjury certifying that to the best of the applicant's  
14 knowledge and belief, the items submitted in the  
15 application are correct. If the applicant is a corporation,  
16 the chief executive officer shall sign the statement. If  
17 there are multiple applicants, these requirements shall  
18 apply to each applicant.

19 (b) The name and business address of the applicant.

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

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

25 (e) An estimate of the number of continuing care  
26 residents at the continuing care retirement community.

27 (f) A description of the proposed continuing care  
28 retirement community, including the services and care to  
29 be provided to residents or available for residents.

30 (g) A statement indicating whether the application is  
31 for a certificate of authority to enter into continuing care  
32 or life care contracts.

33 (h) A license to operate the proposed continuing care  
34 retirement community as a residential care facility for the  
35 elderly or documentation establishing that the applicant  
36 has received a preliminary approval for licensure from  
37 the department's Community Care Licensing Division.

38 (i) A license to operate the proposed skilled nursing  
39 facility or evidence that an application has been filed with



1 the Licensing and Certification Division of the State  
2 Department of Health Services, if applicable.

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

8 (k) A description of any matter in which any  
9 interested party involved with the proposed continuing  
10 care retirement community has been convicted of a  
11 felony or pleaded nolo contendere to a felony charge, or  
12 been held liable or enjoined in a civil action by final  
13 judgment, if the felony or civil action involved fraud,  
14 embezzlement, fraudulent conversion, or the  
15 misappropriation of property. For the purpose of this  
16 subdivision, “interested party” includes any  
17 representative of the developer of the proposed  
18 continuing care retirement community or the applicant,  
19 including all general partners, executive officers, or chief  
20 operating officers and board members of corporations;  
21 and managing members and managers of limited liability  
22 companies for each entity; who has significant  
23 decisionmaking authority with respect to the proposed  
24 continuing care retirement community.

25 (l) If the applicant is an entity other than an  
26 individual, the following information shall also be  
27 submitted:

28 (1) A statement identifying the type of legal entity and  
29 listing the interest and extent of the interest of each  
30 principal in the legal entity. For the purposes of this  
31 paragraph, “principal” means any person or entity  
32 having a financial interest in the legal entity of 10 percent  
33 or more. When the application is submitted in the name  
34 of a corporation, the parent, sole corporate shareholder,  
35 or sole corporate member who controls the operation of  
36 the continuing care retirement community shall be listed  
37 as an applicant. When multiple corporate applicants exist,  
38 they shall be listed jointly by corporate name on the  
39 application, and the certificate of authority shall be issued  
40 in the joint names of the corporations. When the



1 application is submitted by a partnership, all general  
2 partners shall be named as coapplicants and the  
3 department shall name them as coproviders on any  
4 certificate of authority it issues.

5 (2) The names of the members of the provider's  
6 governing body.

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

15 (4) A statement identifying any parent entity or other  
16 affiliate entity, the primary activities of each entity  
17 identified, the relationship of each entity to the applicant,  
18 and the interest in the applicant held by each entity.

19 (5) Copies of all contracts, management agreements,  
20 or other documents setting forth the relationships with  
21 each of the other entities.

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

36 (m) A description of the business experience of the  
37 applicants in the operation or management of similar  
38 facilities.



1 (n) A copy of any advertising material regarding the  
2 proposed continuing care retirement community  
3 prepared for distribution or publication.

4 (o) Evidence of the bonds required by Section 1789.8.

5 (p) A copy of any proposed reservation agreement.

6 (q) A copy of the proposed deposit agreements.

7 (r) The name of the proposed escrow agent and  
8 depository.

9 (s) Any copies of reservation and deposit escrow  
10 account agreements.

11 (t) A copy of any proposed continuing care contracts.

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

26 (v) ~~(1)~~—A statement of the actions that have been, or  
27 will be, taken by the applicant to fund reserves as  
28 required by Section ~~1792.2 or 1793~~ 1792 or 1792.6 and to  
29 otherwise ensure that the applicant will have adequate  
30 finances to fully perform continuing care contract  
31 obligations.

32 ~~(2)~~—~~The~~—obligations. The statement shall describe  
33 actions such as establishing restricted accounts, sinking  
34 funds, trust accounts, or additional reserves.

35 ~~(3)~~—~~If~~ reserves. If the applicant is purchasing an  
36 existing continuing care retirement community from a  
37 selling provider, the applicant shall provide an actuarial  
38 report to determine the liabilities of existing continuing  
39 care contracts and demonstrate the applicant's ability to  
40 fund those obligations.



1 (w) A copy of audited financial statements for the  
2 three most recent fiscal years of the applicant or any  
3 shorter period of time the applicant has been in existence,  
4 prepared in accordance with generally accepted  
5 accounting principles and accompanied by an  
6 independent auditor's report from a reputable firm of  
7 certified public accountants. The audited financial  
8 statements shall be accompanied by a statement signed  
9 and dated by both the chief financial officer and chief  
10 executive officer for the applicant or, if applicable, by  
11 each general partner, or each managing member and  
12 manager, stating that the financial statements are  
13 complete, true, and correct in all material matters to the  
14 best of their knowledge.

15 (x) Unaudited interim financial statements shall be  
16 included if the applicant's fiscal year ended more than 90  
17 days prior to the date of filing. The statements shall be  
18 either quarterly or monthly, and prepared on the same  
19 basis as the annual audited financial statements or any  
20 other basis acceptable to the department.

21 (y) A financial study and a marketing study that  
22 reasonably project the feasibility of the proposed  
23 continuing care retirement community and are prepared  
24 by a firm or firms acceptable to the department. These  
25 studies shall address and evaluate, at a minimum, all of the  
26 following items:

27 (1) The applicant and its prior experience,  
28 qualifications, and management, including a detailed  
29 description of the applicant's proposed continuing care  
30 retirement community, its service package, fee structure,  
31 and anticipated opening date.

32 (2) The construction plans, construction financing,  
33 and permanent financing for the proposed continuing  
34 care retirement community, including a description of  
35 the anticipated source, cost, terms, and use of all funds to  
36 be used in the land acquisition, construction, and  
37 operation of the continuing care retirement community.  
38 This proposal shall include, at a minimum, all of the  
39 following:



1 (A) A description of all debt to be incurred by the  
2 applicant for the continuing care retirement community,  
3 including the anticipated terms and costs of the  
4 financing. The applicant's outstanding indebtedness  
5 related to the continuing care retirement community  
6 may not, at any time, exceed the appraised value of the  
7 continuing care retirement community.

8 (B) A description of the source and amount of the  
9 equity to be contributed by the applicant.

10 (C) A description of the source and amount of all other  
11 funds, including entrance fees, that will be necessary to  
12 complete and operate the continuing care retirement  
13 community.

14 (D) A statement itemizing all estimated project costs,  
15 including the real property costs and the cost of acquiring  
16 or designing and constructing the continuing care  
17 retirement community, and all other similar costs that the  
18 provider expects to incur prior to the commencement of  
19 operation. This itemization shall identify all costs related  
20 to the continuing care retirement community or project,  
21 including financing expenses, legal expenses, occupancy  
22 development costs, marketing costs, and furniture and  
23 equipment.

24 (E) A description of the interest expense, insurance  
25 premiums, and property taxes that will be incurred prior  
26 to opening.

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

30 (G) An estimate of the amount of funds, if any, that  
31 will be necessary to fund startup losses, fund statutory and  
32 refundable contract reserves, and to otherwise provide  
33 additional financial resources in an amount sufficient to  
34 ensure full performance by the provider of its continuing  
35 care contract obligations.

36 (3) An analysis of the potential market for the  
37 applicant's continuing care retirement community,  
38 addressing such items as:

39 (A) A description of the service area, including its  
40 demographic, economic, and growth characteristics.



- 1 (B) A forecast of the market penetration the  
2 continuing care retirement community will achieve  
3 based on the proposed fee structure.
- 4 (C) Existing and planned competition in and about  
5 the primary service area.
- 6 (4) A detailed description of the sales and marketing  
7 plan, including all of the following:
  - 8 (A) Marketing projections, anticipated sales, and  
9 cancellation rates.
  - 10 (B) Month-by-month forecast of unit sales through  
11 sellout.
  - 12 (C) A description of the marketing methods, staffing,  
13 and advertising media to be used by the applicant.
  - 14 (D) An estimate of the total entrance fees to be  
15 received from residents prior to opening the continuing  
16 care retirement community.
- 17 (5) Projected move-in rates, deposit collections, and  
18 resident profiles, including couple mix by unit type, age  
19 distribution, care and nursing unit utilization, and unit  
20 turnover or resale rates.
- 21 (6) A description or analysis of development-period  
22 costs and revenues throughout the development of the  
23 proposed continuing care retirement community.
- 24 (z) Projected annual financial statements for the  
25 period commencing on the first day of the applicant's  
26 current fiscal year through at least the fifth year of  
27 operation.
  - 28 (1) Projected annual financial statements shall be  
29 prepared on an accrual basis using the same accounting  
30 principles and procedures as the audited financial  
31 statements furnished pursuant to subdivision (x).
  - 32 (2) Separate projected annual cash-flow statements  
33 shall be provided. These statements shall show projected  
34 annual cash-flows for the duration of any debt associated  
35 with the continuing care retirement community. If the  
36 continuing care retirement community property is  
37 leased, the cash-flow statement shall demonstrate the  
38 feasibility of closing the continuing care retirement  
39 community at the end of the lease period.



1 (A) The projected annual cash-flow statements shall  
2 be submitted using prevailing rates of interest, and  
3 assume no increase of revenues and expenses due to  
4 inflation.

5 (B) The projected annual cash-flow statements shall  
6 include all of the following:

7 (i) A detailed description and a full explanation of all  
8 assumptions used in preparing the projections,  
9 accompanied by supporting supplementary schedules  
10 and calculations, all to be consistent with the financial  
11 study and marketing study furnished pursuant to  
12 subdivision (y). The department may require such other  
13 supplementary schedules, calculations, or projections as  
14 it determines necessary for an adequate application.

15 (ii) Cash-flow from monthly operations showing  
16 projected revenues for monthly fees received from  
17 continuing care contracts, medical unit fees if applicable,  
18 other periodic fees, gifts and bequests used in operations,  
19 and any other projected source of revenue from  
20 operations less operating expenses.

21 (iii) Contractual cash-flow from activities showing  
22 projected revenues from presales, deposit receipts,  
23 entrance fees, and all other projected sources of revenue  
24 from activities, less contract acquisition, marketing, and  
25 advertising expenditures.

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

32 (v) Cash-flows from investment activities, including,  
33 but not limited to, construction progress payments,  
34 architect and engineering services, furnishings, and  
35 equipment not included in the construction contract,  
36 project development, inspection and testing, marketable  
37 securities, investment earnings, and interfund transfers.

38 (vi) The increase or decrease in cash during the  
39 projection period.



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

5 (viii) The cash balance at the end of the period.

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

11 (3) If the cash-flow statements required by paragraph  
12 (2) indicate that the provider will have cash balances  
13 exceeding two months' projected operating expenses of  
14 the continuing care retirement community, a description  
15 of the manner in which the cash balances will be invested,  
16 and the persons who will be making the investment  
17 decisions, shall accompany the application.

18 (4) The department may require the applicant to  
19 furnish additional data regarding its operating budgets,  
20 projections of cash required for major repairs and  
21 improvements, or any other matter related to its  
22 projections including additional information, schedules,  
23 and calculations regarding occupancy rate projections,  
24 unit types, couple mix, sex and age estimates for resident  
25 mix, turnover rates, refund obligations, and sales.

26 (aa) (1) A declaration by the applicant  
27 acknowledging that it is required to execute and record  
28 a Notice of Statutory Limitation on Transfer relating to  
29 continuing care retirement community property.

30 ~~The~~

31 (2) *The* notice required in this subdivision shall be  
32 acknowledged and suitable for recordation, describe the  
33 property, declare the applicant's intention to use all or  
34 part of the described property for the purposes of a  
35 continuing care retirement community pursuant to this  
36 chapter, and shall be in substantially the following form:  
37



1 “NOTICE OF STATUTORY LIMITATION ON  
2 TRANSFER  
3

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

12 The real property, which is legally owned by (insert the  
13 name of the legal owner) and is the subject of the  
14 statutory limitation to which this notice refers, is more  
15 particularly described as follows: (Insert the legal  
16 description and the assessor’s parcel number of the real  
17 property to which this notice applies.)”  
18

19 (2) The Notice of Statutory Limitation on Transfer  
20 shall remain in effect until notice of release is given by the  
21 department. The department shall execute and record a  
22 release of the notice upon proof of complete performance  
23 of all obligations to residents.

24 (3) Unless a Notice of Statutory Limitation on Transfer  
25 has been recorded with respect to the land on which the  
26 applicant or provider is operating, or intends to operate  
27 a continuing care retirement community, prior to the  
28 date of execution of any trust deed, mortgage, or any  
29 other lien or encumbrance securing or evidencing the  
30 payment of money and affecting land on which the  
31 applicant or provider intends to operate a continuing  
32 care retirement community, the applicant or provider  
33 shall give the department advance written notice of the  
34 proposed encumbrance. Upon the giving of notice to the  
35 department, the applicant or provider shall execute and  
36 record the Notice of Statutory Limitation on Transfer in  
37 the office of the county recorder in each county in which  
38 any portion of the continuing care retirement  
39 community is located prior to encumbering the

1 continuing care retirement community property with  
2 the proposed encumbrance.

3 (4) In the event that the applicant or provider and the  
4 owner of record are not the same entity on the date on  
5 which execution and recordation of the notice is  
6 required, the leasehold or other interest in the continuing  
7 care retirement community property held by the  
8 applicant or provider shall survive in its entirety and  
9 without change, any transfer of the continuing care  
10 retirement community property by the owner. In  
11 addition, the applicant or provider shall record a  
12 memorandum of leasehold or other interest in the  
13 continuing care retirement community property that  
14 includes a provision stating that its interest in the  
15 property survives any transfer of the property by the  
16 owner. The applicant or provider shall provide a copy of  
17 the notice and the memorandum of interest to the owner  
18 of record by certified mail and to the department.

19 (5) The notice shall, and, if applicable, the  
20 memorandum of interest shall be indexed by the recorder  
21 in the grantor-grantee index to the name of the owner of  
22 record and the name of the applicant or provider.

23 (ab) A statement that the applicant will keep the  
24 department informed of any material changes to the  
25 proposed continuing care retirement community or its  
26 application.

27 (ac) Any other information that may be required by  
28 the department for the proper administration and  
29 enforcement of this chapter.

30 SEC. 28. Section 1779.6 of the Health and Safety Code  
31 is amended to read:

32 1779.6. (a) Within seven calendar days of receipt of  
33 an initial application for a permit to accept deposits and  
34 a certificate of authority, the department shall  
35 acknowledge receipt of the application in writing.

36 (b) Within 30 calendar days following its receipt of an  
37 application, the department shall determine if the  
38 application is complete and inform the applicant of its  
39 determination. If the department determines that the  
40 application is incomplete, its notice to the applicant shall



1 identify the additional forms, documents, information,  
2 and other materials required to complete the application.  
3 The department shall allow the applicant adequate time  
4 to submit the requested information and materials. This  
5 review may not determine the adequacy of the materials  
6 included in the application.

7 (c) Within 120 calendar days after the department  
8 determines that an application is complete, the  
9 department shall review the application for adequacy. An  
10 application shall be adequate if it complies with all the  
11 requirements imposed by this chapter, and both the  
12 financial study and marketing study reasonably project  
13 the feasibility of the proposed continuing care retirement  
14 community, as well as demonstrate the financial  
15 soundness of the applicant. The department shall either  
16 approve the application as adequate under this chapter  
17 or notify the applicant that its application is inadequate.  
18 If the application is inadequate, the department shall  
19 identify the deficiencies in the application, provide the  
20 appropriate code references, and give the applicant an  
21 opportunity to respond.

22 (d) Within 60 calendar days after receiving any  
23 additional information or clarification required from the  
24 applicant, the department shall respond to the applicant's  
25 submission in writing and state whether each specific  
26 deficiency has been addressed sufficiently to make the  
27 application adequate. If the department determines that  
28 the application is adequate and in compliance with this  
29 chapter, the department shall issue the permit to accept  
30 deposits. If the department determines that the response  
31 is inadequate, it may request additional information or  
32 clarification from the applicant pursuant to subdivision  
33 (c) or deny the application pursuant to Section 1779.10.

34 (e) If the applicant does not provide the department  
35 with the additional information within 90 days after the  
36 department's notice described in subdivision (c), the  
37 application may be denied for being inadequate. Any  
38 new application shall require an application fee.

39 SEC. 28.5. Section 1779.7 is added to the Health and  
40 Safety Code, to read:



1 1779.7. (a) Where any portion of the consideration  
2 transferred to an applicant as a deposit or to a provider  
3 as consideration for a continuing care contract is  
4 transferred by a person other than the prospective  
5 resident or a resident, that third-party transferor shall  
6 have the same cancellation or refund rights as the  
7 prospective resident or resident for whose benefit this  
8 consideration was transferred.

9 (b) A transferor shall have the same rights to cancel  
10 and obtain a refund as the depositor under the deposit  
11 agreement or the resident under a continuing care  
12 contract.

13 SEC. 29. Section 1779.8 of the Health and Safety Code  
14 is amended to read:

15 1779.8. (a) The applicant shall notify the department  
16 of material changes in the application information  
17 submitted to the department, including the applicant's  
18 financial and marketing projections.

19 (b) An applicant shall provide to the department at  
20 least 60 days' advance written notice of any proposal to  
21 make any changes in the applicant's corporate name,  
22 structure, organization, operation, or financing.

23 (c) Within 30 calendar days after receiving notice of a  
24 change affecting the applicant or the application, the  
25 department shall advise the applicant:

26 (1) Whether additional information is required to  
27 process the pending application.

28 (2) Whether an additional application fee is required.

29 (3) Whether a new application and application fee  
30 must be submitted. The new application fee shall be twice  
31 the actual cost of additional review time caused by the  
32 change. This additional fee is payable to the department  
33 on demand.

34 (d) The department shall suspend the applicant's  
35 application and, if applicable, its permit to accept  
36 deposits if the applicant fails to give written notice of  
37 changes required by this section. The suspension shall  
38 remain in effect until the department has both assessed  
39 the potential impact of the changes on the interests of



1 depositors and taken such action as necessary under this  
2 chapter to protect these interests.

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

5 1779.10. (a) The department shall deny an  
6 application for a permit to accept deposits and a  
7 certificate of authority if the applicant fails to do any of  
8 the following:

9 (1) Pay the application fee as required by Section  
10 1779.2.

11 (2) Submit all information required by this chapter.

12 (3) Submit evidence to support a reasonable belief  
13 that any interested party of the proposed continuing care  
14 retirement community who has committed any offenses  
15 listed in subdivision (k) of Section 1779.4 is of such good  
16 character as to indicate rehabilitation.

17 (4) Submit evidence to support a reasonable belief  
18 that the applicant is capable of administering the  
19 continuing care retirement community in compliance  
20 with applicable laws and regulations when an action  
21 specified in subdivision (j) or (k) of Section 1779.4 has  
22 been taken against the applicant.

23 (5) Demonstrate the feasibility of the proposed  
24 continuing care retirement community.

25 (6) Comply with residential care facility for the  
26 elderly licensing requirements.

27 (b) If the application is denied, no portion of the paid  
28 application fee shall be refundable or refunded.

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

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

33 (1) A statement that the application is denied.

34 (2) The grounds for the denial.

35 (3) A statement informing the applicant that it has the  
36 right to appeal.

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



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

5 SEC. 31. Section 1780 of the Health and Safety Code  
6 is amended to read:

7 1780. The department shall issue a permit to accept  
8 deposits when it has done all of the following:

9 (a) Determined that the application is adequate.

10 (b) Determined that the proposed continuing care  
11 retirement community financial and marketing studies  
12 are acceptable.

13 (c) Reviewed and approved the deposit agreements.

14 (d) Reviewed and approved the deposit escrow  
15 account agreement.

16 SEC. 32. Section 1780.2 of the Health and Safety Code  
17 is amended to read:

18 1780.2. (a) A deposit may be paid in one or several  
19 payments, at or after the time the parties enter into the  
20 deposit agreement.

21 A deposit shall be paid by cash or cash equivalent,  
22 jointly payable to the applicant and the escrow agent or  
23 depository. Possession and control of any deposit  
24 agreement shall be transferred to the escrow agent at the  
25 time the deposit is paid.

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

27 (1) The processing fee shall not exceed 1 percent of  
28 the amount of the average entrance fee or five hundred  
29 dollars (\$500), whichever is greater.

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

33 (c) Payments made by a depositor for upgrades or  
34 modifications to the living unit shall not be placed in  
35 escrow with ~~deposit-subscriptions~~ *deposits*. The applicant  
36 shall provide written refund policies to the depositor  
37 before accepting any payments for modifications or  
38 upgrades.

39 (d) The applicant shall furnish to the department  
40 within the first 10 days of each calendar month a list of all



1 residents who have made payments for modifications or  
2 upgrades, the amounts each resident has paid, the ~~dates~~  
3 *date* of each payment, and the unit to be modified or  
4 upgraded for each resident.

5 (e) All payments for modifications or upgrades shall be  
6 refunded to the depositor with interest if the applicant  
7 does not receive a certificate of authority for the proposed  
8 continuing care retirement community or expansion.

9 (f) The department may record a lien against the  
10 continuing care retirement community property, or any  
11 portion of the continuing care retirement community  
12 property, to secure the applicant's obligations to refund  
13 the depositor's payments made for modifications or  
14 upgrades. Any lien created under this section shall be to  
15 protect depositors governed by Section 1793.15.

16 SEC. 33. Section 1780.4 of the Health and Safety Code  
17 is amended to read:

18 1780.4. (a) All deposit agreements between the  
19 applicant and the depositor shall be in writing and shall  
20 contain all information required by this section.

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

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

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

28 (e) The deposit agreement form shall provide all of  
29 the following:

30 (1) An estimated date for commencement of  
31 construction of the proposed continuing care retirement  
32 community or, if applicable, each phase not to exceed 36  
33 months from the date the permit to accept deposits is  
34 issued.

35 (2) A statement to the effect that the applicant will  
36 notify depositors of any material change in the  
37 application.

38 (3) The identity of the specific unit reserved and the  
39 total deposit for that unit.

40 (4) Processing fee terms and conditions, including:



- 1 (A) The amount.
- 2 (B) A statement explaining the applicant's policy  
3 regarding refund or retention of the processing fee in the  
4 event of death of the depositor or voluntary cancellation  
5 by the depositor.
- 6 (C) Notice that the processing fee shall be refunded  
7 within 30 days if the applicant does not accept the  
8 depositor for residency, or the applicant fails to construct  
9 the continuing care retirement community before the  
10 estimated date of completion and the department  
11 determines that there is no satisfactory cause for the  
12 delay.
- 13 (5) Requirements for payment of the deposit by the  
14 depositor.
- 15 (6) A statement informing the depositor that their  
16 deposit payments will be converted to an entrance fee  
17 payment at the time the continuing care contract is  
18 executed.
- 19 (7) A statement informing the depositor that deposits  
20 ~~will~~ shall be refunded within 30 calendar days of the  
21 depositor's nonacceptance for residency or notice to the  
22 applicant of the death of the depositor.
- 23 (8) A statement informing the depositor that all  
24 deposits ~~will~~ shall be refunded to the depositors if the  
25 continuing care retirement community is not  
26 constructed by the estimated date of completion and the  
27 department determines that there is no satisfactory cause  
28 for the delay.
- 29 (9) A statement informing the depositor that a refund  
30 of the deposit within 10 calendar days of notice of  
31 cancellation by the depositor. The deposit agreement  
32 shall state that depositors who have deposited more than  
33 one thousand dollars (\$1,000) or 5 percent of the entrance  
34 fee, whichever is greater, and who have been notified  
35 that construction of the proposed continuing care  
36 retirement community has commenced, will not be  
37 entitled to a refund of their deposit until the provisional  
38 certificate of authority is issued or after one of the  
39 following occurs:



1 (A) Another depositor has reserved the canceling  
2 depositor's specific residential unit and paid the  
3 necessary deposit.

4 (B) The depositor no longer meets financial or health  
5 requirements for admission.

6 (C) The applicant fails to meet the requirements of  
7 Section 1786 or 1786.2.

8 (10) A statement to depositors that specifies when  
9 funds may be released from escrow to the applicant and  
10 explains that thereafter the depositor's funds will not  
11 have escrow protection.

12 (11) A statement advising the depositor whether  
13 interest will be paid to the depositor on deposits placed  
14 in the deposit escrow account.

15 (f) If cash equivalents are to be accepted in lieu of  
16 cash, all of the following shall also be included in the  
17 deposit agreement:

18 (1) A statement that cash equivalents that may be  
19 accepted as deposits shall be either certificates of deposit  
20 or United States securities with maturities of five years or  
21 less.

22 (2) A statement that the instruments will be held by  
23 the escrow agent in the form in which they were  
24 delivered and assigned by the depositor until they are  
25 replaced by cash or converted to cash.

26 (3) A statement that the depositor will be required to  
27 assign the instruments to a neutral third-party escrow  
28 agent. If the bank or entity that issued the instruments  
29 refuses to allow this assignment, the escrow agent shall  
30 not accept the instruments. These instruments shall be  
31 reassigned to the depositor if the depositor terminates the  
32 deposit agreement before the instruments mature. If the  
33 depositor terminates the deposit agreement after the  
34 instruments mature, the depositor shall receive a cash  
35 refund of the portion of the deposit represented by the  
36 matured instruments.

37 (4) A statement that any amount by which the face  
38 value of the deposited instruments exceeds the required  
39 deposit ~~will~~ *shall* be deemed part of the deposit and ~~will~~



1 *shall* be applied against the depositor's obligations under  
2 the deposit agreement.

3 (5) A statement that the instruments shall be  
4 converted to, or replaced with, cash prior to the  
5 department's authorization for the release of deposits to  
6 the applicant. The depositor shall be advised that if the  
7 depositor does not substitute cash in the amount equal to  
8 the deposit, the applicant may do either of the following:

9 (A) Direct the escrow agent to sell, redeem, or  
10 otherwise convert the instruments to cash and to treat the  
11 proceeds in the same manner as it treats cash deposits  
12 under the deposit agreement. The costs of any such sale,  
13 redemption, or conversion, including, without limitation,  
14 transaction fees and any early withdrawal penalties, may  
15 be charged to the depositor and paid out of the cash or  
16 other instruments received from the depositor in escrow.  
17 If there is a shortfall, the depositor may be immediately  
18 obligated to pay the shortfall by check jointly payable to  
19 the applicant and the escrow agent.

20 (B) Terminate the deposit agreement. In this event,  
21 the escrow agent shall reassign the property to the  
22 depositor and refund all cash in escrow within the time  
23 periods specified in the deposit agreement.

24 (g) A statement that deposits will be invested in  
25 instruments guaranteed by the federal government or an  
26 agency of the federal government, or in investment funds  
27 secured by federally guaranteed instruments.

28 (h) A statement that no funds deposited in a deposit  
29 escrow account ~~will~~ *shall* be subject to any liens,  
30 judgments, garnishments, or creditor's claims against the  
31 applicant, the proposed continuing care retirement  
32 community property, or the continuing care retirement  
33 community. The deposit agreement shall also provide  
34 that deposits may not be subject to any liens or charges  
35 by the escrow agent, except that cash equivalent deposits  
36 may be subject to transactions fees, commissions,  
37 prepayment penalties, and other fees incurred in  
38 connection with these deposits.

39 (i) A schedule of projected monthly care fees  
40 estimated to be charged to residents for each of the first



1 five years of the continuing care retirement community's  
2 existence shall be attached to each deposit agreement.  
3 This schedule shall contain a conspicuous statement in at  
4 least 10-point boldface type that the projected fees are an  
5 estimate only and may be changed without notice.

6 SEC. 34. Section 1781 of the Health and Safety Code  
7 is amended to read:

8 1781. (a) All deposits, excluding processing fees, shall  
9 be placed in an escrow account. All terms governing the  
10 deposit escrow account shall be approved in advance by  
11 the department.

12 (b) The deposit escrow account shall be established by  
13 an escrow agent and all deposits shall be deposited in a  
14 depository located in California and approved by the  
15 department. The department's approval of the  
16 depository shall be based, in part, upon its ability to  
17 ensure the safety of funds and properties entrusted to it  
18 and its qualifications to perform the obligations of the  
19 depository pursuant to the deposit escrow account  
20 agreement and this chapter. The depository may be the  
21 same entity as the escrow agent. All deposits shall be kept  
22 and maintained in a segregated account without any  
23 commingling with other funds, including any funds or  
24 accounts owned by the applicant.

25 (c) If the escrow agent is a title company, it shall meet  
26 the following requirements:

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

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

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

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

35 (d) All deposits shall remain in escrow until the  
36 department has authorized release of the deposits, as  
37 provided in Section 1783.2.

38 (e) Deposits shall be invested in instruments  
39 guaranteed by the federal government or an agency of



1 the federal government, or in investment funds secured  
2 by federally guaranteed instruments.

3 (f) No funds deposited in a deposit escrow account  
4 shall be subject to any liens, judgments, garnishments, or  
5 creditor’s claims against the applicant or the continuing  
6 care retirement community. The deposit agreement shall  
7 also provide that deposits may not be subject to any liens  
8 or charges by the escrow agent except that cash  
9 equivalent deposits may be subject to transaction fees,  
10 commissions, prepayment penalties, and other fees  
11 incurred in connection with those deposits.

12 SEC. 35. Section 1781.2 of the Health and Safety Code  
13 is amended to read:

14 1781.2. (a) All deposits shall be delivered to the  
15 escrow agent and deposited into the deposit escrow  
16 account within five business days after receipt by the  
17 applicant. The deposit escrow account shall be accounted  
18 for in a separate escrow account.

19 (b) The applicant shall provide, with all deposits  
20 delivered to the escrow holder, a copy of the executed  
21 deposit agreement, a copy of the receipt given to the  
22 depositor, a summary of all deposits made on that date,  
23 and any other materials required by the escrow holder.

24 SEC. 36. Section 1781.4 of the Health and Safety Code  
25 is amended to read:

26 1781.4. The deposit escrow account agreement  
27 between the applicant and the escrow agent shall include  
28 all of the following:

29 (a) The amount of the processing fee.

30 (b) A provision requiring that all deposits shall be  
31 placed into the deposit escrow account upon delivery.

32 (c) A provision requiring that monthly progress  
33 reports be sent by the escrow agent directly to the  
34 department, beginning the month after the deposit  
35 escrow account is opened and continuing through the  
36 month funds are released from escrow. These reports  
37 shall be prepared every month that there are any funds  
38 in the account and shall show each of the following in  
39 separate columns:



- 1 (1) The name and address of each depositor or  
2 resident.
- 3 (2) The designation of the living unit being provided.
- 4 (3) Any processing fee which is deposited into escrow.
- 5 (4) The total deposit required for the unit.
- 6 (5) The total entrance fee for the unit.
- 7 (6) Twenty percent of the total entrance fee.
- 8 (7) Each deposit payment made by or on behalf of the  
9 depositor and any refunds paid to the depositor.
- 10 (8) The unpaid balance for each depositor's deposit.
- 11 (9) The unpaid balance for each depositor's entrance  
12 fee.
- 13 (10) The current balance in the deposit escrow  
14 account for each depositor and the collective balance.
- 15 (11) The dollar amount, type, and maturity date of any  
16 cash equivalent paid by each depositor.
- 17 (d) A provision for investment of escrow account  
18 funds in a manner consistent with Section 1781.
- 19 (e) A provision for refunds to depositors in the manner  
20 specified by Section 1783.2.
- 21 (f) A provision regarding the payment of interest  
22 earned on the funds held in escrow in the manner  
23 specified in the applicant's deposit agreement.
- 24 (g) Release of deposit escrow account funds in the  
25 manner specified in Section 1783.3, including to whom  
26 payment of interest earned on the funds will be made.
- 27 (h) Representations by the escrow agent that it is not,  
28 and shall not be during the term of the deposit escrow  
29 account, a lender to the applicant or for the proposed  
30 continuing care retirement community, or a fiduciary for  
31 any lender or bondholder for that continuing care  
32 retirement community, unless approved by the  
33 department.
- 34 (i) If cash equivalents may be accepted as a deposit in  
35 lieu of cash, the deposit escrow account agreement shall  
36 also include all of the following:
  - 37 (1) Authorization for the escrow agent to convert  
38 instruments to cash when they mature. The escrow agent  
39 may notify all financial institutions whose securities are  
40 held by the escrow agent that all interest and other



1 payments due upon these instruments shall be paid to the  
2 escrow agent. The escrow agent shall collect, hold, invest,  
3 and disburse these funds as provided under the escrow  
4 agreement.

5 (2) Authorization for the escrow agent to deliver the  
6 instruments in its possession and release funds from  
7 escrow according to written directions from the  
8 applicant, consistent with the terms provided in the  
9 applicant's deposit escrow account agreement. The  
10 escrow agent shall distribute cash and other property to  
11 an individual depositor only upon either ~~the~~ *of the*  
12 *following occurrences:*

13 (A) *The* subscriber's written request to receive  
14 monthly payments of interest accrued on his or her  
15 ~~deposits, or receipt~~ *deposits.*

16 (B) *Receipt* of notice from the applicant to pay a  
17 refund to the depositor.

18 (3) A provision that the escrow agent shall maintain,  
19 at all times, adequate records showing the beneficial  
20 ownership of the instruments.

21 (4) A provision that the escrow agent shall have no  
22 responsibility or authority to initiate any transfer of the  
23 instruments or conduct any other transaction without  
24 specific written instructions from the applicant.

25 (5) A provision authorizing, instructing, and directing  
26 the escrow agent to do all of the following:

27 (A) Redeem and roll over matured investments into  
28 money market accounts or other department approved  
29 instruments with the escrow agent or an outside financial  
30 institution.

31 (B) Collect and receive interest, principal, and other  
32 things of value in connection with the instruments.

33 (C) Sign for the depositors any declarations, affidavits,  
34 certificates, and other documents that may be required  
35 to collect or receive payments or distributions with  
36 respect to the instruments.

37 SEC. 37. Section 1781.6 of the Health and Safety Code  
38 is amended to read:

39 1781.6. All changes to a deposit agreement or deposit  
40 escrow account agreement form shall be submitted to,



1 and approved by, the department before use by the  
2 applicant.

3 SEC. 38. Section 1781.8 of the Health and Safety Code  
4 is amended to read:

5 1781.8. (a) Deposits held in escrow shall be placed in  
6 an interest bearing account or invested as provided under  
7 subdivision (e) of Section 1781.

8 (b) Interest, income, and other gains derived from  
9 deposits held in a deposit escrow account may not be  
10 released or distributed from the deposit escrow account  
11 except upon written approval of the department.

12 (c) Approval by the department for the release of  
13 earnings generated from funds held in escrow shall be  
14 based upon an assessment that funds remaining in the  
15 deposit escrow account will be sufficient to pay refunds  
16 and any interest promised to all depositors, as well as  
17 administrative costs owed to the escrow agent.

18 (d) When released by the department, interest earned  
19 by the funds in the deposit escrow account shall be  
20 distributed in accordance with the terms of the deposit  
21 agreement.

22 SEC. 39. Section 1781.10 of the Health and Safety  
23 Code is amended to read:

24 1781.10. No deposit or any other asset held in a deposit  
25 escrow account, shall be encumbered or used as collateral  
26 for any obligation of the applicant or any other person,  
27 unless the applicant obtains prior written approval from  
28 the department for the encumbrance or use as collateral.  
29 The department shall not approve any encumbrance or  
30 use as collateral under this section unless the  
31 encumbrance or use as collateral is expressly  
32 subordinated to the rights of depositors under this  
33 chapter to refunds of their deposits.

34 SEC. 40. Section 1782 of the Health and Safety Code  
35 is amended to read:

36 1782. (a) An applicant shall not begin construction  
37 on any phase of a continuing care retirement community  
38 without first obtaining a written acknowledgment from  
39 the department that all of the following prerequisites  
40 have been met:



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

3 (2) A permit to accept deposits has been issued to the  
4 applicant or, in the case of continuing care retirement  
5 community renovation projects, the department has  
6 issued a written approval of the applicant's application.

7 (3) For new continuing care retirement communities,  
8 or construction projects adding new units to an existing  
9 continuing care retirement community, deposits equal to  
10 at least 20 percent of each depositor's applicable entrance  
11 fee have been placed into escrow for each phase for at  
12 least 50 percent of the number of residential living units  
13 to be constructed.

14 (b) Applicants shall notify depositors in writing when  
15 construction is commenced.

16 (c) For purposes of this chapter only, construction  
17 shall not include site preparation, demolition, or the  
18 construction of model units.

19 SEC. 41. Section 1783 of the Health and Safety Code  
20 is amended to read:

21 1783. (a) (1) An applicant proposing to convert an  
22 existing building to continuing care use shall comply with  
23 all the application requirements in Section 1779.4  
24 identified by the department as necessary for the  
25 department to assess the feasibility of the proposed  
26 continuing care retirement community or conversion.

27 (2) If the proposed continuing care retirement  
28 community is already occupied and only a portion of the  
29 existing residential units will be converted into  
30 continuing care units, the department may modify the  
31 presale requirements of paragraph (3) of subdivision (a)  
32 of Section 1782 and paragraph (2) of subdivision (a) of  
33 Section 1783.3.

34 (b) Any applicant proposing to convert an existing  
35 building into continuing care units shall indicate the  
36 portion of the facility to be used for continuing care  
37 contract services. The continuing care allocation  
38 specified by the applicant shall be reflected in all financial  
39 and marketing studies and shall be used to determine the  
40 applicant's compliance with the percentage



1 requirements stated in paragraph (3) of subdivision (a)  
2 of Section 1782 and paragraph (2) of subdivision (a) of  
3 Section 1783.3.

4 SEC. 42. Section 1783.2 of the Health and Safety Code  
5 is amended to read:

6 1783.2. (a) An escrow agent shall refund to the  
7 depositor all amounts required by the depositor's deposit  
8 agreement upon receiving written notice from the  
9 applicant that a depositor has canceled the deposit  
10 agreement. Refunds required by this subdivision shall be  
11 paid to the depositor within 10 days after the depositor  
12 gives notice of cancellation to the applicant.

13 (b) Depositors who have deposited more than one  
14 thousand dollars (\$1,000) or 5 percent of the entrance fee,  
15 whichever is greater, and who have been notified that  
16 construction of the proposed continuing care retirement  
17 community has commenced, shall not be entitled to a  
18 refund of their deposit until any of the following occurs:

19 (1) The continuing care retirement community is  
20 opened for operation.

21 (2) Another depositor has reserved the canceling  
22 depositor's specific residential unit and paid the  
23 necessary deposit.

24 (3) The depositor no longer meets financial or health  
25 requirements for admission.

26 SEC. 43. Section 1783.3 is added to the Health and  
27 Safety Code, to read:

28 1783.3. (a) In order to seek a release of escrowed  
29 funds, the applicant shall petition in writing to the  
30 department and certify to each of the following:

31 (1) The construction of the proposed continuing care  
32 retirement community or phase is at least 50 percent  
33 completed.

34 (2) At least 20 percent of the total of each applicable  
35 entrance fee has been received and placed in escrow for  
36 at least 60 percent of the total number of residential living  
37 units. Any unit for which a refund is pending may not be  
38 counted toward that 60-percent requirement.

39 (3) Deposits made with cash equivalents have been  
40 either converted into, or substituted with, cash or held for



1 transfer to the provider. A cash equivalent deposit may  
2 be held for transfer to the provider, if all of the following  
3 conditions exist:

4 (A) Conversion of the cash equivalent instrument  
5 would result in a penalty or other substantial detriment  
6 to the depositor.

7 (B) The provider and the depositor have a written  
8 agreement stating that the cash equivalent will be  
9 transferred to the provider, without conversion into cash,  
10 when the deposit escrow is released to the provider under  
11 ~~this subdivision (a)~~. *this section*.

12 (C) The depositor is credited the amount of the cash  
13 equivalent.

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

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

20 (b) The department shall instruct the escrow agent to  
21 release to the applicant all deposits in the deposit escrow  
22 account when all of the following requirements have  
23 been met:

24 (1) The department has confirmed the information  
25 provided by the applicant pursuant to subdivision (a).

26 (2) The department, in consultation with the  
27 Continuing Care Advisory Committee, has determined  
28 that there has been substantial compliance with  
29 projected annual financial statements that served as a  
30 basis for issuance of the permit to accept deposits.

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

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

36 (5) The applicant has complied with any additional  
37 reasonable requirements for release of funds placed in  
38 the deposit escrow accounts, established by the  
39 department under Section 1785.



1 (c) The escrow agent shall release the funds held in  
2 escrow to the applicant only when the department has  
3 instructed it to do so in writing.

4 (d) When an application describes different phases of  
5 construction that will be completed and commence  
6 operating at different times, the department may apply  
7 the 50 percent construction completion requirement to  
8 any one or group of phases requested by the applicant,  
9 provided the phase or group of phases is shown in the  
10 applicant's projections to be economically viable.

11 SEC. 44. Section 1784 of the Health and Safety Code  
12 is amended to read:

13 1784. (a) If construction of the proposed continuing  
14 care retirement community, or applicable phase, has not  
15 commenced within 36 months from the date the permit  
16 to accept deposits is issued, an applicant may request an  
17 extension of the permit to accept deposits. The request  
18 for extension shall be made to the department in writing  
19 and shall include the reasons why construction of the  
20 proposed continuing care retirement community was not  
21 commenced within the required 36-month period. The  
22 request for extension shall also state the new estimated  
23 date for commencement of construction.

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

26 (1) If the department determines there is satisfactory  
27 cause for the delay in commencement of construction of  
28 the proposed continuing care retirement community or  
29 applicable phase, the department may extend the permit  
30 to accept deposits for up to one year.

31 (2) If the department determines that there is no  
32 satisfactory cause for the delay, the department may  
33 instruct the escrow agent to refund to depositors all  
34 deposits held in escrow, plus any interest due under the  
35 terms of the deposit subscription agreements, and  
36 require the applicant to file a new application and  
37 application fee. The applicant shall also refund all  
38 processing fees paid by the depositors.

39 (c) Within 10 calendar days the applicant shall notify  
40 each depositor of the department's approval or denial of



1 the extension, of any expiration of the permit to accept  
2 deposits and of any right to a refund of their deposits.

3 SEC. 45. Section 1785 of the Health and Safety Code  
4 is amended to read:

5 1785. (a) If, at any time prior to issuance of a  
6 certificate of authority, the applicant's average  
7 performance over any six-month period does not  
8 substantially equal or exceed the applicant's projections  
9 for that period, the department, after consultation and  
10 upon consideration of the recommendations of the  
11 Continuing Care Advisory Committee, may take any of  
12 the following actions:

13 (1) Cancel the permit to accept deposits and require  
14 that all funds in escrow be returned to depositors  
15 immediately.

16 (2) Increase the required percentages of construction  
17 completed, units reserved, or entrance fees to be  
18 deposited as required under Sections 1782, 1783.3, 1786,  
19 and 1786.2.

20 (3) Increase the reserve requirements under this  
21 chapter.

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

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

34 (d) If deposits have been released from escrow, the  
35 department may further require the applicant to reopen  
36 the escrow as a condition of receiving any further  
37 entrance fee payments from depositors or residents.

38 (e) The department may require the applicant to  
39 notify all depositors and, if applicable, all residents, of any  
40 actions required by the department under this section.



1 SEC. 47. Section 1786 of the Health and Safety Code  
2 is amended to read:

3 1786. (a) The department shall issue a provisional  
4 certificate of authority when an applicant has done all of  
5 the following:

6 (1) Complied with the approved marketing plans.

7 (2) Met and continues to meet the requirements  
8 imposed under subdivision (a) of Section 1783.3. The  
9 issuance of the provisional certificate of authority shall  
10 not require, and shall not be dependent upon the release  
11 of escrowed funds. Release of escrowed funds shall be  
12 governed by Section 1783.3.

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

15 (4) Obtained the required licenses.

16 (5) Paid the remainder of the application fee.

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

19 (7) Provided the department with a recorded copy of  
20 the Notice of Statutory Limitation on Transfer required  
21 by subdivision (aa) of Section 1779.4.

22 (8) Met all applicable provisions of this chapter.

23 (b) The provisional certificate of authority shall expire  
24 12 months after issuance unless both of the following  
25 occur:

26 (1) No later than 60 days prior to the expiration of the  
27 provisional certificate of authority, the provider petitions  
28 the department and demonstrates good cause in writing  
29 for an extension of the provisional certificate of authority.

30 (2) The department determines that the provider is  
31 capable of meeting the requirements of Section 1786.2  
32 during the extension period.

33 (c) The department shall exercise its discretion to  
34 determine the length of the extension period.

35 (d) After the provisional certificate of authority is  
36 issued providers may continue to take deposits by  
37 modifying the deposit agreement as appropriate. The  
38 new deposit agreement shall clearly state the rights of the  
39 depositor and the provider. The applicant shall submit  
40 the agreements to the department for review and



1 approval prior to use. A provider that holds a provisional  
2 certificate of authority or certificate of authority may  
3 accept fees paid by potential residents to be placed on a  
4 waiting list without using a deposit agreement. These  
5 waiting list fees may not exceed five hundred dollars  
6 (\$500), and shall be refunded to the potential resident  
7 upon written request.

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

11 SEC. 48. Section 1786.2 of the Health and Safety Code  
12 is amended to read:

13 1786.2. (a) The department shall not issue a  
14 certificate of authority to an applicant or a provider, until  
15 the department determines that each of the following has  
16 occurred:

17 (1) A provisional certificate of authority has been  
18 issued or all of the requirements for a provisional  
19 certificate of authority have been satisfied. In the case of  
20 an application for a new certificate of authority due to an  
21 organizational change, if the continuing care retirement  
22 community is financially sound and operating in  
23 compliance with this chapter, it shall be sufficient for the  
24 purposes of this paragraph that the department has  
25 approved the application in writing.

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

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

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

39 (C) At a minimum, continuing care contracts have  
40 been executed for 50 percent of the total residential living



1 units in the continuing care retirement community, with  
2 payment in full of the entrance fee, and the provider  
3 furnishes and maintains a letter of credit or other security,  
4 satisfactory to the department, sufficient to bring the  
5 total amount of payments to a level equivalent to 80  
6 percent of the total entrance fees for the entire  
7 continuing care retirement community.

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

10 (4) Adequate reserves exist as required by Sections  
11 ~~1792.2 and 1793~~ 1792 and 1792.6. For a new continuing  
12 care retirement community without an operating history,  
13 the department may approve calculation of required  
14 reserves on a pro forma basis in conjunction with  
15 compliance with approved marketing plans.

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

18 (b) When issued, the certificate of authority, whether  
19 full or conditioned, shall remain in full force unless  
20 forfeited by operation of law under Section 1793.7,  
21 inactivated under Section 1793.8, or suspended or  
22 revoked by the department pursuant to Section 1793.21.

23 (c) The provider shall display the certificate of  
24 authority in a prominent place within the continuing care  
25 retirement community.

26 SEC. 49. Section 1787 of the Health and Safety Code  
27 is amended to read:

28 1787. (a) All continuing care contracts shall be in  
29 writing and shall contain all the information required by  
30 Section 1788.

31 (b) All continuing care contract forms, including all  
32 addenda, exhibits, and any other related documents,  
33 incorporated therein, as well as any modification to these  
34 items, shall be approved by the department prior to their  
35 use.

36 (c) The department shall approve continuing care  
37 contract forms that comply with this chapter. The  
38 requirements of this chapter and Chapter 3.2  
39 (commencing with Section 1569) shall be the bases for  
40 approval by the department. To the extent that this



1 chapter conflicts with Chapter 3.2 (commencing with  
2 Section 1569), this chapter shall prevail.

3 (d) A continuing care contract approved by the  
4 department shall constitute the full and complete  
5 agreement between the parties.

6 (e) More than one continuing care contract form may  
7 be used by a provider if multiple program options are  
8 available.

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

11 (g) A clearly legible copy of the continuing care  
12 contract, executed by each provider named on the  
13 provisional certificate of authority or the certificate of  
14 authority, the resident, and any transferor, shall be  
15 furnished with all required or included attachments to  
16 the resident at the time the continuing care contract is  
17 executed. A copy shall also be furnished within 10  
18 calendar days to any transferor who is not a resident.

19 (h) The provider shall require a written  
20 acknowledgment from the resident (and any transferor  
21 who is not a resident) that the executed copy of the  
22 continuing care contract and attachments have been  
23 received.

24 (i) The continuing care contract shall be an admissions  
25 agreement for purposes of the residential care facility for  
26 the elderly and long-term health care facility  
27 requirements and shall state the resident's entitlement to  
28 receive these levels of care. The continuing care contract  
29 may state the entitlement for skilled nursing care in  
30 accordance with the provisions of law governing  
31 admissions to long-term health care facilities in effect at  
32 the time of admission to the skilled nursing facility. The  
33 parties may agree to the terms of nursing facility  
34 admission at the time the continuing care contract is  
35 executed, or the provider may present an exemplar of the  
36 then-current nursing facility admission agreement and  
37 require the resident to execute the form of agreement in  
38 effect at the time of admission to the nursing facility. The  
39 terms shall include the nursing fee, or the method of  
40 determining the fee, at the time of the execution of the



1 continuing care contract, the services included in and  
2 excluded from the fee, the grounds for transfers and  
3 discharges, and any other terms required to be included  
4 under applicable law.

5 (j) Only the skilled nursing admission agreement  
6 sections of continuing care contracts which cover  
7 long-term health care facility services are subject to  
8 Chapter 3.95 (commencing with Section 1599.60). The  
9 provider shall submit the proposed skilled nursing  
10 admission agreement to the State Department of Health  
11 Services for review and approval under that  
12 department's rules and regulations. The skilled nursing  
13 admission agreement submitted to the department shall  
14 be reviewed for any violation of the laws relating to  
15 continuing care contracts.

16 SEC. 50. Section 1788 of the Health and Safety Code  
17 is amended to read:

18 1788. (a) Any continuing care contracts shall contain  
19 all of the following:

- 20 (1) The legal name and address of each provider.
- 21 (2) The name and address of the continuing care  
22 retirement community.
- 23 (3) The resident's name and the identity of the unit  
24 the resident will occupy.
- 25 (4) If there is a transferor other than the resident, the  
26 transferor shall be a party to the contract and the  
27 transferor's name and address shall be specified.
- 28 (5) If the provider has used the name of any charitable  
29 or religious or nonprofit organization in its title before  
30 January 1, 1979, and continues to use that name, and that  
31 organization is not responsible for the financial and  
32 contractual obligations of the provider or the obligations  
33 specified in the continuing care contract, the provider  
34 shall include in every continuing care contract a  
35 conspicuous statement which clearly informs the resident  
36 that the organization is not financially responsible.
- 37 (6) The date the continuing care contract is signed by  
38 the resident and, where applicable, any other transferor.
- 39 (7) The duration of the continuing care contract.



1 (8) A list of the services that will be made available to  
2 the resident as required to provide the appropriate level  
3 of care. The list of services shall include the services  
4 required as a condition for licensure as a residential care  
5 facility for the elderly, including, ~~but not limited to,~~ all of  
6 the following:

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

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

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

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

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

20 (F) Assisted living services.

21 (G) Assistance with taking medications.

22 (H) Central storing and distribution of medications.

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

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

29 (10) The procedures and conditions under which  
30 residents may be voluntarily and involuntarily  
31 transferred from their designated living units. The  
32 transfer procedures, at a minimum, shall include  
33 provisions addressing all of the following circumstances  
34 under which transfer may be authorized:

35 (A) When, in the opinion of the continuing care  
36 retirement community management, a physician,  
37 appropriate specialist, or licensing official in consultation  
38 with the resident and appropriate representative, if any,  
39 any of the following conditions exists:



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

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

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

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

25 (B) Transfer of a second resident when a shared  
26 accommodation arrangement is terminated.

27 (C) Transfer is requested or required, by the provider  
28 or the resident, for any other reason.

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

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

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



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

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

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

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

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

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

22 (17) The amount of the entrance fee.

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

27 (19) The amount of any processing fee.

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

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

32 (A) A statement that the occupancy and use of the  
33 accommodations by the resident is contingent upon the  
34 regular payment of the fee.

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

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

39 (D) A provision specifying the provider will adjust  
40 monthly care fees for the resident's support,



1 maintenance, board, or lodging, when a resident requires  
2 medical attention while away from the continuing care  
3 retirement community.

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

10 (22) All continuing care contracts that include  
11 monthly care fees shall address changes in monthly care  
12 fees by including either of the following provisions:

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

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

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

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

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

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

33 (24) A provision indicating whether the resident's  
34 rights under the continuing care contract include any  
35 proprietary interests in the assets of the provider or in the  
36 continuing care retirement community, or both.

37 (25) If the continuing care retirement community  
38 property is encumbered by a security interest that is  
39 senior to any claims the residents may have to enforce  
40 continuing care contracts, a provision shall advise the



1 residents that any claims they may have under the  
2 continuing care contract are subordinate to the rights of  
3 the secured lender. For equity projects, the continuing  
4 care contract shall specify the type and extent of the  
5 equity interest and whether any entity holds a security  
6 interest.

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

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

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

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

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

34 (A) Any continuing care contract containing a clause  
35 that provides for a continuing care contract to be  
36 terminated for “just cause,” “good cause,” or other similar  
37 provision, shall also include a provision that none of the  
38 following activities by the resident, or on behalf of the  
39 resident, constitutes “just cause,” “good cause,” or  
40 otherwise activates the termination provision:



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

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

5 (B) The provision required by this paragraph shall also  
6 state that the provider shall not discriminate or retaliate  
7 in any manner against any resident of a continuing care  
8 retirement community for contacting the department, or  
9 any other state, county, or city agency, or any elected or  
10 appointed government official to file a complaint or for  
11 any other reason, or for participation in a residents'  
12 organization or association.

13 (C) Nothing in this paragraph diminishes the  
14 provider's ability to terminate the continuing care  
15 contract for good and sufficient cause.

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

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

23 (33) The policy or terms for refunding any portion of  
24 the entrance fee, in the event of cancellation,  
25 termination, or death. If the continuing care contract  
26 includes any provision for a refund of all or a part of the  
27 entrance fee, then it shall also ~~specify the amount, if any,~~  
28 ~~the resident has paid or will pay for upgrades, special~~  
29 ~~features or modifications to the resident's unit, and state~~  
30 ~~that, if the continuing care contract is cancelled or~~  
31 ~~terminated by the provider, the provider shall amortize~~  
32 ~~the specified amount at the same rate as the resident's~~  
33 ~~entrance fee, and refund the unamortized balance to the~~  
34 ~~resident at the same time the provider pays the resident's~~  
35 ~~entrance fee refund.~~ *do all of the following:*

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



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

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

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

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

11

12 “NOTICE”

(date)

13

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

32

33 (35) The provider may not attempt to absolve itself in  
34 the continuing care contract from liability for its  
35 negligence by any statement to that effect, and shall  
36 include the following statement in the contract: “Nothing  
37 in this continuing care contract limits either the  
38 provider’s obligation to provide adequate care and  
39 supervision for the resident or any liability on the part of



1 the provider which may result from the provider's failure  
2 to provide this care and supervision.”

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

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

7 (2) Care will be provided for the duration of the  
8 resident's life unless the life care contract is canceled or  
9 terminated by the provider during the cancellation  
10 period or after the cancellation period for good cause.

11 (3) A comprehensive continuum of care will be  
12 provided to the resident, including skilled nursing, in a  
13 facility under the ownership and supervision of the  
14 provider on, or adjacent to, the continuing care  
15 retirement community premises.

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

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

22 (c) Continuing care contracts may include ~~any of the~~  
23 ~~following provisions—provisions that do any of the~~  
24 ~~following:~~

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

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

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

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



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

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

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

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

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

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

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

27 (4) ~~A clause which restricts~~ *Restrict* transfer or  
28 assignments of the resident’s rights and privileges under  
29 a continuing care contract due to the personal nature of  
30 the continuing care contract.

31 (5) ~~A clause for the protection of~~ *Protect* the  
32 provider’s ability to waive a resident’s breach of the terms  
33 or provisions of the continuing care contract in specific  
34 instances without relinquishing its right to insist upon full  
35 compliance by the resident with all terms or provisions in  
36 the contract.

37 (6) ~~A provision that~~ *Provide that* the resident shall  
38 reimburse the provider for any uninsured loss or damage  
39 to the resident’s unit, beyond normal wear and tear,  
40 resulting from the resident’s carelessness or negligence.



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

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

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

18 (10) ~~A provision that requires~~ *Require* the resident's  
19 cooperation and assistance in the diligent prosecution of  
20 any claim or action against any third party.

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

25 (12) ~~A provision to allow~~ *Allow* a provider, whose  
26 property is tax exempt, to charge the resident on a pro  
27 rata basis property taxes, or in-lieu taxes, the provider is  
28 required to pay.

29 (13) ~~Any other provision~~ *Make any other provision*  
30 approved by the department.

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

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



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

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

7 (3) A copy of the approved financial plan for meeting  
8 the reserve requirements.

9 (4) Any other supplemental statements or  
10 attachments necessary to accurately represent the  
11 provider’s financial ability to fulfill its continuing care  
12 contract obligations.

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

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

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

33  
34 “NOTICE OF CANCELLATION” (date)  
35  
36 Your first date of occupancy under this contract is: \_\_\_\_\_  
37

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



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

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

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

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

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

26  
27 to \_\_\_\_\_  
28 (Name of provider)

29 at \_\_\_\_\_  
30 (Address of provider's place of business)

31 not later than midnight of \_\_\_\_\_ (date).

32  
33 I hereby cancel this  
34 transaction \_\_\_\_\_  
35 (Resident or  
36 Transferor's signature)"

37  
38 SEC. 51. Section 1788.2 of the Health and Safety Code  
39 is amended to read:



1 1788.2. (a) A continuing care contract may be  
2 canceled without cause by written notice from either  
3 party within 90 days from the date of the resident's initial  
4 occupancy.

5 (b) For all continuing care contracts, death of the  
6 resident before or during the cancellation period shall  
7 constitute a cancellation of the continuing care contract  
8 under subdivision (a), unless the continuing care  
9 contract includes specific provisions otherwise.

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

12 (1) To all executed continuing care contracts  
13 regarding a unit in a continuing care retirement  
14 community that is not an equity continuing care  
15 retirement community.

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

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

23 (1) If possession of the living unit in a continuing care  
24 retirement community that is not an equity continuing  
25 care retirement community is returned to the provider  
26 in substantially the same condition as when received, the  
27 resident's only obligations shall be to pay a reasonable fee  
28 to cover costs and to pay the reasonable value of services  
29 rendered pursuant to the canceled continuing care  
30 contract.

31 (2) Equity project providers may impose a resale fee  
32 on sellers. For contracts entered into after January 1, 1996,  
33 upon the cancellation of a continuing care contract  
34 executed in conjunction with the purchase of an equity  
35 interest from the provider, the provider may charge a  
36 resale fee not to exceed the excess of the gross resale price  
37 of the equity interest over the purchase price paid by the  
38 resident or on behalf of the resident for the interest.

39 (e) No resale fee shall exceed the sum of 10 percent of  
40 either the original or resale price of the equity interest



1 and 100 percent of the excess if any, of the gross resale  
2 price of the equity interest over the purchase price paid  
3 by the resident or on behalf of the resident for the interest  
4 if either of the following applies:

5 (1) The continuing care contract involved the  
6 purchase of an equity interest from the provider and is  
7 terminated after the cancellation period.

8 (2) The continuing care contract involved the  
9 purchase of an equity interest from another resident and  
10 is terminated at any time.

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

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

22 SEC. 52. Section 1788.4 of the Health and Safety Code  
23 is amended to read:

24 1788.4. (a) During the cancellation period, the  
25 provider shall pay all refunds owed to a resident within  
26 14 calendar days after a resident makes possession of the  
27 living unit available to the provider.

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

34 (c) In nonequity projects, if the continuing care  
35 contract is canceled by either party during the  
36 cancellation period or terminated by the provider after  
37 the cancellation period, the resident shall be refunded  
38 the difference between the total amount of entrance,  
39 monthly, and optional fees paid and the amount used for  
40 care of the resident.



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

8 (e) A lump sum payment to a resident after  
9 termination of a continuing care contract that is  
10 conditioned upon resale of a unit shall not be considered  
11 to be a refund and may not be characterized or advertised  
12 as a refund. The lump sum payment shall be paid to the  
13 resident within 14 calendar days after resale of the unit.

14 ~~SEC. 52.1. Section 1789.1 is added to the health and~~  
15 ~~Safety Code, to read:~~

16 ~~1789.1. (a) Before executing a deposit agreement or~~  
17 ~~continuing care agreement, or receiving any payment~~  
18 ~~from a depositor or prospective resident, a provider shall~~  
19 ~~deliver to the other parties in the deposit or continuing~~  
20 ~~care agreement a disclosure statement in the form~~  
21 ~~prescribed by the department.~~

22 ~~(b) The department shall issue a disclosure statement~~  
23 ~~form that shall generally require disclosure of the~~  
24 ~~following information:~~

25 ~~(1) General information regarding the provider and~~  
26 ~~the facility, including at a minimum all of the following:~~

27 ~~(A) The facility name, address, and telephone~~  
28 ~~number.~~

29 ~~(B) The type of ownership, names of the facility owner~~  
30 ~~and operator, the names of any affiliated facilities, and~~  
31 ~~any direct religious affiliation.~~

32 ~~(C) Whether accredited and by what organization.~~

33 ~~(D) The year the facility opened and the distance to~~  
34 ~~the nearest shopping center and hospital.~~

35 ~~(E) Whether the facility offers life care contracts or~~  
36 ~~continuing care contracts, and whether the facility is~~  
37 ~~single story or multistory.~~

38 ~~(F) The number of the facility's studio units, one~~  
39 ~~bedroom units, two bedroom units, cottages or houses,~~  
40 ~~assisted living beds, and skilled nursing beds.~~



1 ~~(G) The facility's percentage occupancy at the~~  
2 ~~provider's most recent year end.~~

3 ~~(H) The form of contracts offered, the range of~~  
4 ~~entrance fees, the percentages of a resident's entrance~~  
5 ~~fees that may be refunded, and the health care benefits~~  
6 ~~included in contract.~~

7 ~~(I) Any age and insurance requirements for~~  
8 ~~admission.~~

9 ~~(J) A listing of common area amenities and other~~  
10 ~~services included with the monthly service fee, and a~~  
11 ~~listing of those amenities and services that are available~~  
12 ~~for an additional charge.~~

13 ~~(K) The number of meals each day included in the~~  
14 ~~monthly service fee, the number available for an extra~~  
15 ~~charge, and frequency of, and additional cost, if any, for,~~  
16 ~~housekeeping services.~~

17 ~~(2) Income from operations during the most recent~~  
18 ~~five years for which audited financial statements have~~  
19 ~~been completed, including all of the following:~~

20 ~~(A) Operating income (excluding amortization of~~  
21 ~~entrance fee income).~~

22 ~~(B) Operating expense (excluding depreciation,~~  
23 ~~amortization, and interest).~~

24 ~~(C) Net income from operations.~~

25 ~~(D) Interest expense.~~

26 ~~(E) Unrestricted contributions.~~

27 ~~(F) Nonoperating income or expense, excluding~~  
28 ~~extraordinary items.~~

29 ~~(G) Net income loss before entrance fees.~~

30 ~~(H) Net cash flow from entrance fees, that is the total~~  
31 ~~deposits less refunds.~~

32 ~~(3) The name of the lender, outstanding balance,~~  
33 ~~interest rate, date of origination, date of maturity, and~~  
34 ~~amortization period for all secured debt.~~

35 ~~(4) Financial ratios for each of the two most recent~~  
36 ~~years for which audited financial statements have been~~  
37 ~~prepared, including all of the following: debt-to-asset~~  
38 ~~ratio, operating ratio, debt service coverage ratio, and~~  
39 ~~days cash-on-hand. The formulas for each ratio shall be~~



1 ~~determined by the department after consultation with~~  
2 ~~the Continuing Care Advisory Committee.~~

3 ~~(5) The average monthly service fees charged during~~  
4 ~~the most recent five years, and the percentage changes~~  
5 ~~in the average from year to year, for each of the following:~~  
6 ~~studio units, one bedroom units, two bedroom units,~~  
7 ~~cottages or houses, assisted living units, and skilled~~  
8 ~~nursing units.~~

9 ~~(6) Comments from the provider explaining any of the~~  
10 ~~information included in the disclosure form.~~

11 ~~(e) Each provider shall update its disclosure statement~~  
12 ~~at least annually when it completes its annual audited~~  
13 ~~financial statements. Each provider shall file its updated~~  
14 ~~version of the disclosure statement with the department~~  
15 ~~not later than the final filing date for its annual report.~~

16 ~~(d) The form prescribed by the department under this~~  
17 ~~section shall be used by providers to comply with the~~  
18 ~~requirements of this section.~~

19 SEC. 53. Section 1789 of the Health and Safety Code  
20 is amended to read:

21 1789. (a) A provider shall notify the department and  
22 obtain its approval before making any changes to any of  
23 the following: its name; its business structure or form of  
24 doing business; the overall management of its continuing  
25 care retirement community; or the terms of its financing.

26 (b) The provider shall give written notice of proposed  
27 changes to the department at least 60 calendar days in  
28 advance of making the changes described in this section.

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

31 (d) Within 10 calendar days of submitting notification  
32 to the department of any proposed changes under  
33 subdivision (a), the provider shall notify the resident  
34 association of the proposed changes in the manner  
35 required by subdivision (e) of Section 1779.

36 SEC. 53.5. Section 1789.1 is added to the Health and  
37 Safety Code, to read:

38 1789.1. (a) Before executing a deposit agreement or  
39 continuing care agreement, or receiving any payment  
40 from a depositor or prospective resident, a provider shall



1 *deliver to the other parties in the deposit or continuing*  
2 *care agreement a disclosure statement in the form*  
3 *prescribed by the department.*

4 *(b) The department shall issue a disclosure statement*  
5 *form that shall generally require disclosure, at a*  
6 *minimum, of the following information:*

7 *(1) General information regarding the provider and*  
8 *the continuing care retirement community, including at*  
9 *a minimum all of the following:*

10 *(A) The continuing care retirement community's*  
11 *name, address, and telephone number.*

12 *(B) The type of ownership, names of the continuing*  
13 *care retirement community's owner and operator; the*  
14 *names of any affiliated facilities, and any direct religious*  
15 *affiliation.*

16 *(C) Whether accredited and by what organization.*

17 *(D) The year the continuing care retirement*  
18 *community opened and the distance to the nearest*  
19 *shopping center and hospital.*

20 *(E) Whether the continuing care retirement*  
21 *community offers life care contracts or continuing care*  
22 *contracts, and whether the continuing care retirement*  
23 *community is single story or multistory.*

24 *(F) The number of the continuing care retirement*  
25 *community's studio units, one bedroom units, two*  
26 *bedroom units, cottages or houses, assisted living beds,*  
27 *and skilled nursing beds.*

28 *(G) The continuing care retirement community's*  
29 *percentage occupancy at the provider's most recent fiscal*  
30 *year end.*

31 *(H) The form of contracts offered, the range of*  
32 *entrance fees, the percentages of a resident's entrance*  
33 *fees that may be refunded, and the health care benefits*  
34 *included in contract.*

35 *(I) Any age and insurance requirements for*  
36 *admission.*

37 *(J) A listing of common area amenities and other*  
38 *services included with the monthly service fee, and a*  
39 *listing of those amenities and services that are available*  
40 *for an additional charge.*



- 1 (K) *The number of meals each day included in the*  
2 *monthly service fee, the number of meals available for an*  
3 *extra charge, the frequency of housekeeping services,*  
4 *and additional cost, if any, for, housekeeping services.*
- 5 (2) *Income from operations during the most recent*  
6 *five years for which audited financial statements have*  
7 *been completed, including all of the following:*
- 8 (A) *Operating income (excluding amortization of*  
9 *entrance fee income).*
- 10 (B) *Operating expense (excluding depreciation,*  
11 *amortization, and interest).*
- 12 (C) *Net income from operations.*
- 13 (D) *Interest expense.*
- 14 (E) *Unrestricted contributions.*
- 15 (F) *Nonoperating income or expense, excluding*  
16 *extraordinary items.*
- 17 (G) *Net income or loss before entrance fees.*
- 18 (H) *Net cash flow from entrance fees, that is the total*  
19 *deposits less refunds.*
- 20 (3) *The name of the lender; outstanding balance,*  
21 *interest rate, date of origination, date of maturity, and*  
22 *amortization period for all secured debt.*
- 23 (4) *Financial ratios for each of the three most recent*  
24 *years for which audited financial statements have been*  
25 *prepared, including all of the following: debt-to-asset*  
26 *ratio, operating ratio, debt service coverage ratio, and*  
27 *days cash-on-hand. The formulas for each ratio shall be*  
28 *determined by the department after consultation with*  
29 *the Continuing Care Advisory Committee.*
- 30 (5) *The average monthly service fees charged during*  
31 *the most recent five years, and the percentage changes*  
32 *in the average from year to year, for each of the following:*  
33 *studio units, one bedroom units, two bedroom units,*  
34 *cottages and houses, assisted living units, and skilled*  
35 *nursing units.*
- 36 (6) *Comments from the provider explaining any of the*  
37 *information included in the disclosure form.*
- 38 (c) *Each provider shall update its disclosure statement*  
39 *at least annually when it completes its annual audited*  
40 *financial statements. Each provider shall file its updated*



1 *version of the disclosure statement with the department*  
2 *not later than the final filing date for its annual report.*

3 *(d) The form prescribed by the department under this*  
4 *section shall be used by providers to comply with the*  
5 *requirements of this section.*

6 SEC. 54. Section 1789.2 of the Health and Safety Code  
7 is amended to read:

8 1789.2. (a) A provider shall provide the department  
9 with written notice at least 90 calendar days prior to  
10 closing any transaction that results in an encumbrance or  
11 lien on a continuing care retirement community  
12 property or its revenues.

13 (b) The written notice required by this section shall  
14 include all of the following:

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

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

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

21 (4) An analysis of the impact that the proposed  
22 encumbrance would have on assets available for statutory  
23 reserves required by Section 1792.2, and refund reserves  
24 required by Section ~~1793~~ 1792.6.

25 (c) Within seven calendar days of receipt of notice of  
26 proposed changes, the department shall acknowledge  
27 receipt of the notice in writing.

28 (d) Within 30 calendar days following its receipt of the  
29 notice, the department shall inform the provider in  
30 writing whether additional materials are required to  
31 evaluate the transaction.

32 (e) Within 90 calendar days following its receipt of  
33 additional materials, the department shall inform the  
34 provider of its approval or denial of the proposed  
35 transaction.

36 (f) Providers shall not execute the proposed financial  
37 transaction for which notice has been given pursuant to  
38 subdivision (a) without the department's written  
39 authorization unless either the 30-day response period or  
40 the 90 calendar day period for the department's review



1 of the provider’s request has expired without any  
2 response by the department.

3 (g) If the department determines that the proposed  
4 financial transaction will materially increase monthly  
5 care fees or impair the provider’s ability to maintain  
6 required reserves, the department may:

7 (1) Refuse to approve the transaction.

8 (2) Record a notice of lien on the provider’s property  
9 pursuant to Section 1793.15 after notifying the provider  
10 and giving the provider an opportunity to withdraw the  
11 planned transaction.

12 (3) Take both actions and any other action that it  
13 determines is necessary to protect the best interest of the  
14 residents.

15 (h) Within 10 calendar days of submitting notification  
16 to the department of any proposed encumbrance to the  
17 community property, the provider shall notify the  
18 resident governing body or association of the proposed  
19 encumbrance in the manner required by subdivision (e)  
20 of Section 1779.

21 SEC. 55. Section 1789.4 of the Health and Safety Code  
22 is amended to read:

23 1789.4. (a) A provider for a continuing care  
24 retirement community shall obtain approval from the  
25 department before consummating any sale or transfer of  
26 the continuing care retirement community or any  
27 interest in that community, other than sale of an equity  
28 interest in a unit to a resident or other transferor.

29 (b) The provider shall provide written notice to the  
30 department at least 120 calendar days prior to  
31 consummating the proposed transaction.

32 (c) The notice required by this section shall include all  
33 of the following:

34 (1) The identity of the purchaser.

35 (2) A description of the terms of the transfer or sale,  
36 including the sales price.

37 (3) A plan for ensuring performance of the existing  
38 continuing care contract obligations.

39 (d) The provider shall give written notice to all  
40 continuing care contract residents and depositors 120



1 calendar days prior to the sale or transfer. The notice shall  
2 do all of the following:

- 3 (1) Describe the parties.
- 4 (2) Describe the proposed sale or transfer.
- 5 (3) Describe the arrangements for fulfilling  
6 continuing care contract obligations.
- 7 (4) Describe options available to any depositor or  
8 resident who does not wish to have his or her contract  
9 assumed by a new provider.
- 10 (5) Include an acknowledgment of receipt of the  
11 notice to be signed by the resident.

12 (e) Unless a new provider assumes all of the  
13 continuing care obligations of the selling provider at the  
14 close of the sale or transfer, the selling provider shall set  
15 up a trust fund or secure a performance bond to ensure  
16 the fulfillment of all its continuing care contract  
17 obligations.

18 (f) The purchaser shall make applications for, and  
19 obtain, the appropriate licenses and a certificate of  
20 authority before executing any continuing care contracts  
21 or assuming the selling provider’s continuing care  
22 contract obligations.

23 SEC. 56. Section 1789.6 of the Health and Safety Code  
24 is amended to read:

25 1789.6. A provider shall record with the county  
26 recorder a “Notice of Statutory Limitation on Transfer”  
27 for each community as required by paragraph (1) of  
28 subdivision (aa) of Section 1779.4 and Section 1786.

29 SEC. 57. Section 1789.8 of the Health and Safety Code  
30 is amended to read:

31 1789.8. Each provider shall obtain and maintain in  
32 effect insurance or a fidelity bond for each agent or  
33 employee, who, in the course of his or her agency or  
34 employment, has access to any substantial amount of  
35 funds. This requirement is separate from the bonding  
36 requirements of residential care facility for the elderly  
37 regulations.

38 ~~SEC. 57.1. Section 1792 of the Health and Safety Code~~  
39 ~~is amended and renumbered to read:~~



1     ~~1791.1. (a) Any provider furnishing care pursuant to~~  
 2     ~~a prepaid continuing care contract executed after~~  
 3     ~~January 1, 1979, shall establish a reserve fund escrow~~  
 4     ~~account with an escrow agent, in an amount which equals~~  
 5     ~~the aggregate principal and interest, rental, or lease~~  
 6     ~~payments due during the next 12 months on account of~~  
 7     ~~any first mortgage or other long-term financing of the~~  
 8     ~~continuing care retirement community or any leases or~~  
 9     ~~other rental agreement for a continuing care retirement~~  
 10    ~~community.~~

11    ~~(b) The principal of the escrow account may be~~  
 12    ~~invested, as provided in subparagraphs (A) through (E),~~  
 13    ~~inclusive, of paragraph (3) of subdivision (e) of Section~~  
 14    ~~1792.2 concerning investment of reserve funds, with the~~  
 15    ~~earnings thereon payable to the provider.~~

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

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

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

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

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

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

33

34    ~~SEC. 57.2. Section 1792.2 of the Health and Safety~~  
 35    ~~Code is amended and renumbered to read:~~

36    ~~1791.2. (a) Any entity that has executed or assumed~~  
 37    ~~continuing care contracts shall maintain reserves~~  
 38    ~~covering obligations thereunder.~~

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



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

3

4	Age	Females	Males	Age	Females	Males
5	55	26.323	23.635	83	7.952	6.269
6	56	25.526	22.863	84	7.438	5.854
7	57	24.740	22.101	85	6.956	5.475
8	58	23.964	21.350	86	6.494	5.124
9	59	23.199	20.609	87	6.054	4.806
10	60	22.446	19.880	88	5.613	4.513
11	61	21.703	19.163	89	5.200	4.236
12	62	20.972	18.457	90	4.838	3.957
13	63	20.253	17.764	91	4.501	3.670
14	64	19.545	17.083	92	4.175	3.388
15	65	18.849	16.414	93	3.862	3.129
16	66	18.165	15.759	94	3.579	2.903
17	67	17.493	15.116	95	3.329	2.705
18	68	16.832	14.486	96	3.109	2.533
19	69	16.182	13.869	97	2.914	2.384
20	70	15.553	13.268	98	2.741	2.254
21	71	14.965	12.676	99	2.584	2.137
22	72	14.367	12.073	100	2.433	2.026
23	73	13.761	11.445	101	2.289	1.919
24	74	13.189	10.830	102	2.152	1.818
25	75	12.607	10.243	103	2.022	1.723
26	76	12.011	9.673	104	1.899	1.637
27	77	11.394	9.139	105	1.784	1.563
28	78	10.779	8.641	106	1.679	1.510
29	79	10.184	8.159	107	1.588	1.500
30	80	9.620	7.672	108	1.522	1.500
31	81	9.060	7.188	109	1.500	1.500
32	82	8.501	6.719	110	1.500	1.500

33  
34 ~~The life expectancy table set forth in this paragraph~~  
35 ~~shall be used until this section is amended.~~

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

38 ~~(3) If a continuing care retirement community has~~  
39 ~~contracted with a resident under 55 years of age, provide~~



1 the department with the methodology used to determine  
2 that resident's life expectancy.

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

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

8 (1) Compute net cash per capita costs:

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

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

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

29 (C) Total mean number of residents: Add the total  
30 number of residents at the beginning of the fiscal year to  
31 the total number of residents at the end of the fiscal year  
32 and divide by two. For continuing care retirement  
33 communities wherein resident population fluctuates  
34 significantly from month to month and for continuing  
35 care retirement communities in their first year of  
36 operation, the mean number of residents by level of care  
37 or the total mean number may be computed by adding  
38 the number of residents at the end of each month in the  
39 fiscal year and dividing by the total number of months



1 included. The daily attendance for the fiscal year may also  
2 be used to determine the mean number of residents.

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

20 (2) Compute projected life cost:

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

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

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

33 (4) Compute projected life revenue:

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



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

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

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

10 ~~(5) Compute statutory reserve:~~

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

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

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

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

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

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

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

39 ~~(3) Stocks, bonds, and securities, at current market~~  
40 ~~value unless otherwise specified, shall meet the following~~



1 ~~criteria to be approved as assets available for statutory~~  
2 ~~reserves:~~

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

7 ~~(B) Common stocks rated "above average" or higher~~  
8 ~~by any national rating agency. For example, a rating of~~  
9 ~~A+, A, or A- by Standard and Poor's Corporation is~~  
10 ~~required for common stock.~~

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

13 ~~(D) Nonfederal bonds that have a current rating of at~~  
14 ~~least "A" by Moody's Investors Service, Standard and~~  
15 ~~Poor's Corporation, or Fitch Investors Service, and are~~  
16 ~~listed on a national securities exchange or on the National~~  
17 ~~Market System of the NASDAQ Stock Market.~~

18 ~~(E) Bonds that are not listed on a national securities~~  
19 ~~exchange or on the National Market System of the~~  
20 ~~NASDAQ Stock Market, but are traded over the counter~~  
21 ~~and have a current rating of at least "Aa" by Moody's~~  
22 ~~Investors Service or at least "AA" by Standard and Poor's~~  
23 ~~Corporation or Fitch's Investors Service.~~

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

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

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



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

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

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

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

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

30 ~~(B) Qualified for sale in California.~~

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

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

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

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



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

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

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

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

18 ~~SEC. 57.3. Article 6.5 (commencing with Section~~  
19 ~~1792) is added to Chapter 10 of Division 2 of the Health~~  
20 ~~and Safety Code, to read:~~

21

22 *Article 6.5. Liquid Reserve Requirements*

23

24 *SEC. 57.1. Section 1792 of the Health and Safety Code*  
25 *is repealed.*

26 ~~1792. (a) Any provider furnishing care pursuant to a~~  
27 ~~prepaid continuing care contract executed after January~~  
28 ~~1, 1979, shall establish a reserve fund escrow account with~~  
29 ~~an escrow agent, in an amount which equals the~~  
30 ~~aggregate principal and interest, rental, or lease~~  
31 ~~payments due during the next 12 months on account of~~  
32 ~~any first mortgage or other long-term financing of the~~  
33 ~~continuing care retirement community or any leases or~~  
34 ~~other rental agreement for a continuing care retirement~~  
35 ~~community.~~

36 ~~(b) The principal of the escrow account may be~~  
37 ~~invested, as provided in subparagraphs (A) through (E),~~  
38 ~~inclusive, of paragraph (3) of subdivision (e) of Section~~  
39 ~~1792.2 concerning investment of reserve funds, with the~~  
40 ~~earnings thereon payable to the provider.~~



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

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

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

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

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

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

18 *SEC. 57.15. Section 1792 is added to the Health and*  
19 *Safety Code, to read:*

20 1792. (a) A provider shall maintain at all times  
21 qualifying assets as a liquid reserve in an amount that  
22 equals or exceeds the sum of the following:

23 (1) The amount the provider is required to hold as a  
24 debt service reserve under Section 1792.3.

25 (2) The amount the provider must hold as an  
26 operating expense reserve under Section 1792.4.

27 (b) The liquid reserve requirement described in this  
28 section is satisfied when a provider holds qualifying assets  
29 in the amount required. Except as may be required under  
30 subdivision (d), a provider is not required to set aside,  
31 deposit into an escrow, or otherwise restrict the assets it  
32 holds as its liquid reserve.

33 (c) A provider shall not allow the amount it holds as its  
34 liquid reserve to fall below the amount required by this  
35 section. In the event the amount of a provider's liquid  
36 reserve is insufficient, the provider shall prudently  
37 eliminate the deficiency by increasing its assets qualifying  
38 under Section 1792.2.

39 (d) The department may increase the amount a  
40 provider is required to hold as its liquid reserve or require



1 that a provider immediately place its liquid reserve into  
2 an escrow account meeting the requirements of Section  
3 1781 if the department has reason to believe the provider  
4 is any of the following:

- 5 (1) Insolvent.
- 6 (2) In imminent danger of becoming insolvent.
- 7 (3) In a financially unsound or unsafe condition.
- 8 (4) In a condition such that it may otherwise be unable  
9 to fully perform its obligations pursuant to continuing  
10 care contracts.

11 *SEC. 57.2. Section 1792.1 is added to the Health and*  
12 *Safety Code, to read:*

13 1792.1. (a) For ~~facilities~~ *providers* that have  
14 voluntarily and permanently discontinued entering into  
15 continuing care contracts, the department may allow a  
16 reduced liquid reserve amount if the department finds  
17 that the reduction is consistent with the financial  
18 protections imposed by this article. The reduced liquid  
19 reserve amount shall be based upon the percentage of  
20 residents at the continuing care retirement community  
21 who have continuing care contracts.

22 (b) For providers holding a certificate of authority as  
23 of January 1, 2001, the liquid reserve requirement  
24 described in Section 1792 shall be phased in over the  
25 24-month period following January 1, 2001. A provider  
26 holding a certificate of authority shall comply with the  
27 liquid reserve requirements if all of the following apply:

28 (1) During the first 12 months following January 1,  
29 2001, the provider holds as its liquid reserve, qualifying  
30 assets that equal or exceed 25 percent of the provider's  
31 debt reserve obligation; plus qualifying assets that equal  
32 or exceed 25 percent of the provider's operating expense  
33 *reserve* obligation.

34 (2) During the 13th through 24th months following  
35 January 1, 2001, the provider holds as its liquid reserve,  
36 qualifying assets that equal or exceed 50 percent of the  
37 provider's debt reserve obligation; plus qualifying assets  
38 that equal or exceed 50 percent of the provider's  
39 operating expense *reserve* obligation.



1 (3) After the 24 months following January 1, 2001, the  
2 provider holds as its liquid reserve qualifying assets in the  
3 amount required by Section 1792.

4 (c) Providers who are unable to satisfy the debt  
5 service reserve or operating expense reserve  
6 requirements during the 24-month period described in  
7 subdivision (b) may apply to the department for an  
8 extension of the time to comply with those reserve  
9 requirements. The department shall grant a one-year  
10 extension request to a provider upon its showing that an  
11 extension is necessary and consistent with protecting the  
12 financial soundness of the provider.

13 *SEC. 57.21. Section 1792.2 of the Health and Safety*  
14 *Code is repealed:*

15 ~~1792.2. (a) Any entity that has executed or assumed~~  
16 ~~continuing care contracts shall maintain reserves~~  
17 ~~covering obligations thereunder.~~

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

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

22

23	Age	Females	Males	Age	Females	Males
24	55	26.323	23.635	83	7.952	6.269
25	56	25.526	22.863	84	7.438	5.854
26	57	24.740	22.101	85	6.956	5.475
27	58	23.964	21.350	86	6.494	5.124
28	59	23.199	20.609	87	6.054	4.806
29	60	22.446	19.880	88	5.613	4.513
30	61	21.703	19.163	89	5.200	4.236
31	62	20.972	18.457	90	4.838	3.957
32	63	20.253	17.764	91	4.501	3.670
33	64	19.545	17.083	92	4.175	3.388
34	65	18.849	16.414	93	3.862	3.129
35	66	18.165	15.759	94	3.579	2.903
36	67	17.493	15.116	95	3.329	2.705
37	68	16.832	14.486	96	3.109	2.533
38	69	16.182	13.869	97	2.914	2.384
39	70	15.553	13.268	98	2.741	2.254
40	71	14.965	12.676	99	2.584	2.137



1	72	<del>14.367</del>	<del>12.073</del>	<del>100-</del>	<del>2.433</del>	<del>2.026</del>
2	73	<del>13.761</del>	<del>11.445</del>	<del>101-</del>	<del>2.289</del>	<del>1.919</del>
3	74	<del>13.189</del>	<del>10.830</del>	<del>102-</del>	<del>2.152</del>	<del>1.818</del>
4	75	<del>12.607</del>	<del>10.243</del>	<del>103-</del>	<del>2.022</del>	<del>1.723</del>
5	76	<del>12.011</del>	<del>-9.673</del>	<del>104-</del>	<del>1.899</del>	<del>1.637</del>
6	77	<del>11.394</del>	<del>-9.139</del>	<del>105-</del>	<del>1.784</del>	<del>1.563</del>
7	78	<del>10.779</del>	<del>-8.641</del>	<del>106-</del>	<del>1.679</del>	<del>1.510</del>
8	79	<del>10.184</del>	<del>-8.159</del>	<del>107-</del>	<del>1.588</del>	<del>1.500</del>
9	80	<del>-9.620</del>	<del>-7.672</del>	<del>108-</del>	<del>1.522</del>	<del>1.500</del>
10	81	<del>-9.060</del>	<del>-7.188</del>	<del>109-</del>	<del>1.500</del>	<del>1.500</del>
11	82	<del>-8.501</del>	<del>-6.719</del>	<del>110-</del>	<del>1.500</del>	<del>1.500</del>

12  
 13 ~~The life expectancy table set forth in this paragraph~~  
 14 ~~shall be used until this section is amended.~~

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

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

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

24 ~~(e) The reserves shall be calculated by progressing~~  
 25 ~~through each of the following steps:~~

26 ~~(1) Compute net cash per capita costs:~~

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

36 ~~For a continuing care retirement community in its first~~  
 37 ~~year of operation or following a major addition to an~~  
 38 ~~existing continuing care retirement community, cash~~  
 39 ~~operating expenses for calculating reserve requirements~~



1 ~~may be classified as fixed or variable and totaled~~  
2 ~~separately.~~

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

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

21 ~~(D) Net cash per capita cost: Cash operating expenses~~  
22 ~~divided by the mean number of residents. It is acceptable,~~  
23 ~~but not required, to compute net cash per capita for~~  
24 ~~various levels of care, based on allocated expenses and~~  
25 ~~contributions from consolidated financial statements.~~  
26 ~~Allocation methods shall be subject to the approval of the~~  
27 ~~department, and schedules shall be prepared for all levels~~  
28 ~~of care, including any levels not covered by continuing~~  
29 ~~care contracts. For a continuing care retirement~~  
30 ~~community in its first year of operation or following a~~  
31 ~~major addition to an existing continuing care retirement~~  
32 ~~community, net cash per capita cost for calculating~~  
33 ~~reserve requirements may be the sum of the figures~~  
34 ~~determined by dividing fixed cash operating expenses by~~  
35 ~~the number of residents at the end of the fiscal year, and~~  
36 ~~dividing variable cash operating expenses by the mean~~  
37 ~~number of residents.~~

38 ~~(2) Compute projected life cost:~~



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

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

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

13 ~~(4) Compute projected life revenue:~~

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

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

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

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

30 ~~(5) Compute statutory reserve:~~

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

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

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



1 ~~executed prepaid contracts with at least one-half of the~~  
2 ~~residents, compute 25 percent of the total statutory~~  
3 ~~reserves.~~

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

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

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

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

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

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

27 ~~(B) Common stocks rated "above average" or higher~~  
28 ~~by any national rating agency. For example, a rating of~~  
29 ~~A+, A, or A- by Standard and Poor's Corporation is~~  
30 ~~required for common stock.~~

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

33 ~~(D) Nonfederal bonds that have a current rating of at~~  
34 ~~least "A" by Moody's Investors Service, Standard and~~  
35 ~~Poor's Corporation, or Fitch Investors Service, and are~~  
36 ~~listed on a national securities exchange or on the National~~  
37 ~~Market System of the NASDAQ Stock Market.~~

38 ~~(E) Bonds that are not listed on a national securities~~  
39 ~~exchange or on the National Market System of the~~  
40 ~~NASDAQ Stock Market, but are traded over the counter~~



1 ~~and have a current rating of at least “Aa” by Moody’s~~  
2 ~~Investors Service or at least “AA” by Standard and Poor’s~~  
3 ~~Corporation or Fitch’s Investors Service.~~

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

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

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

21 ~~(A) The value of this real estate shall be based on 70~~  
22 ~~percent of the net equity thereof, which shall be the book~~  
23 ~~value, assessed value, or current appraised value within~~  
24 ~~12 months prior to the end of the fiscal year, less all~~  
25 ~~encumbrances, depreciation, and the amount required~~  
26 ~~for reserves for refundable contracts under Section 1793,~~  
27 ~~all according to audited financial statements acceptable~~  
28 ~~to the department.~~

29 ~~(B) All appraisals shall be prepared by either a~~  
30 ~~member of the American Institute of Appraisers or a~~  
31 ~~member of the Society of Real Estate Appraisers, or the~~  
32 ~~county assessor. The department may require technical~~  
33 ~~reports to be verified or certified, or both. The expense~~  
34 ~~of any technical reports or any verifications thereof shall~~  
35 ~~be borne by the provider.~~

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



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

4 ~~(A) The trust management shall have experience~~  
5 ~~either managing another mutual fund registered under~~  
6 ~~the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1~~  
7 ~~et seq.), or have been registered as an investment adviser~~  
8 ~~under the Investment Advisors Act of 1940 (15 U.S.C. Sec.~~  
9 ~~80b-1 et seq.), and in either case shall currently have at~~  
10 ~~least one hundred million dollars (\$100,000,000) under its~~  
11 ~~supervision.~~

12 ~~(B) Qualified for sale in California.~~

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

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

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

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

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

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

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

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

39 *SEC. 57.25. Section 1792.2 is added to the Health and*  
40 *Safety Code, to read:*



1 1792.2. (a) A provider shall satisfy its liquid reserve  
2 obligation with qualifying assets. Qualifying assets are:

3 (1) Cash.

4 (2) Cash equivalents as defined in paragraph (4) of  
5 subdivision (c) of Section 1771.

6 (3) Investment securities, *as defined in paragraph (2)*  
7 *of subdivision (i) of Section 1771.*

8 (4) Equity securities, including mutual funds, *as*  
9 *defined in paragraph (7) of subdivision (e) of Section*  
10 *1771.*

11 (5) Lines of credit and letters of credit that meet the  
12 requirements of this paragraph. The line of credit or  
13 letter of credit shall be issued by a state or federally  
14 chartered financial institution approved by the  
15 department or whose long-term debt is rated in the top  
16 three long-term debt rating categories by either Moody's  
17 Investors Service, Standard and Poor's Corporation, or a  
18 recognized securities rating agency acceptable to the  
19 department. The line of credit or letter of credit shall  
20 obligate the financial institution to furnish credit to the  
21 provider.

22 (A) The terms of the line of credit or letter of credit  
23 shall at a minimum provide both of the following:

24 (i) The department's approval shall be obtained by the  
25 provider and communicated in writing to the financial  
26 institution before any modification.

27 (ii) The financial institution shall fund the line of  
28 credit or letter of credit and pay the proceeds to the  
29 ~~provide~~ *provider* no later than four business days  
30 following written instructions from the department that,  
31 in the sole judgment of the department, funding of the  
32 provider's minimum liquid reserve is required.

33 (B) The provider shall provide written notice to the  
34 department at least 14 days before the expiration of the  
35 line of credit or letter of credit if the term has not been  
36 extended or renewed by that time. The notice shall  
37 describe the qualifying assets the provider will use to  
38 satisfy the liquid reserve requirement when the line of  
39 credit or letter of credit expires.



1 (C) A provider may satisfy all or a portion of its liquid  
2 reserve requirement with the available and unused  
3 portion of a qualifying line of credit or letter of credit.

4 (6) For purposes of satisfying all or a portion of a  
5 provider's debt service reserve requirement described in  
6 Section 1792.3, restricted assets that are segregated or  
7 held in a separate account or escrow as a debt service  
8 reserve under the terms of the provider's long-term debt  
9 instruments are qualifying assets, subject to all of the  
10 following conditions:

11 (A) The assets are restricted by the debt instrument so  
12 that they may be used only to pay principal, interest, and  
13 credit enhancement premiums.

14 (B) The provider furnishes to the department a copy  
15 of the agreement under which the restricted assets are  
16 held and certifies that it is a correct and complete copy.  
17 The provider, ~~escrowholder~~ *escrow holder*, or other  
18 entity holding the assets must agree to provide to the  
19 department any information the department may  
20 request concerning the debt service reserve held in trust  
21 or escrow.

22 (C) The market value, or guaranteed value, if  
23 applicable, of the restricted assets, up to the amount the  
24 provider must hold as a debt reserve under Section  
25 1792.3, will be included as part of the provider's liquid  
26 reserve.

27 (D) The restricted assets described in this paragraph  
28 will not reduce or count towards the amount the provider  
29 must hold in its liquid reserve for operating expenses.

30 (7) For purposes of satisfying all or a portion of a  
31 provider's operating expense reserve requirement  
32 described in Section 1792.4, restricted assets that are  
33 segregated or held in a separate account or escrow as a  
34 reserve for operating expenses, are qualifying assets  
35 subject to all of the following conditions:

36 (A) The governing instrument restricts the assets so  
37 that they may be used only to pay operating costs when  
38 operating funds are insufficient.

39 (B) The provider furnishes to the department a copy  
40 of the agreement under which the assets are held,



1 certified by the provider to be a correct and complete  
2 copy. The provider, ~~escrow holder~~ *escrow holder*, or other  
3 entity holding the assets shall agree to provide to the  
4 department any information the department may  
5 request concerning the account.

6 (C) The market value, or the guaranteed value, if  
7 applicable, of the restricted assets, up to the amount the  
8 provider is required to hold as an operating expense  
9 reserve under Section 1792.4, will be included as part of  
10 the provider's liquid reserve.

11 (D) The restricted assets described in this paragraph  
12 shall not reduce or count towards the amount the  
13 provider is required to hold in its liquid reserve for  
14 long-term debt.

15 (b) Except as otherwise provided in this subdivision,  
16 the assets held by the provider as its liquid reserve may  
17 not be subject to any liens, charges, judgments,  
18 garnishments, or creditors' claims and may not be  
19 hypothecated, pledged as collateral, or otherwise  
20 encumbered in any manner. A provider may encumber  
21 assets held in its liquid reserve as part of a general security  
22 pledge of assets or similar collateralization that is part of  
23 the provider's long-term capital debt covenants and is  
24 included in the provider's long-term debt indenture or  
25 similar instrument.

26 *SEC. 57.3. Section 1792.3 is added to the Health and*  
27 *Safety Code, to read:*

28 1792.3. (a) Each provider shall include in its liquid  
29 reserve a reserve for its long-term debt obligations in an  
30 amount equal to the sum of all of the following:

31 (1) All regular principal and interest payments, as well  
32 as credit enhancement premiums, paid by the provider  
33 during the immediately preceding fiscal year on account  
34 of any fully amortizing long-term debt owed by the  
35 provider. If a provider has incurred new long-term debt  
36 during the immediately preceding fiscal year, the  
37 amount required by this paragraph for that debt is 12  
38 times the provider's most recent monthly payment on the  
39 debt.



1 (2) Facility rental or leasehold payments, and any  
2 related payments such as lease insurance, paid by the  
3 provider during the immediately preceding fiscal year.

4 (3) All payments paid by the provider during the  
5 immediately preceding fiscal year on account of any debt  
6 that provides for a balloon payment. If the balloon  
7 payment debt was incurred within the immediately  
8 preceding fiscal year, the amount required by this  
9 paragraph for that debt is 12 times the provider's most  
10 recent monthly payment on the debt made during the  
11 fiscal year.

12 (b) If any balloon payment debt matures within the  
13 next 24 months, the provider shall submit with its annual  
14 report a plan for refinancing the debt or repaying the  
15 debt with existing assets.

16 (c) When principal and interest payments on  
17 long-term debt are paid to a trust whose beneficial  
18 interests are held by the residents, the department may  
19 waive all or any portion of the debt service reserve  
20 required by this section. The department shall not waive  
21 any debt service reserve requirement unless the  
22 department finds that the waiver is consistent with the  
23 financial protections imposed by this chapter.

24 *SEC. 57.31. Section 1792.4 is added to the Health and*  
25 *Safety Code, to read:*

26 1792.4. (a) Each provider shall include in its liquid  
27 reserve a reserve for its operating expenses in an amount  
28 that equals or exceeds 45 days' net operating expenses.  
29 For purposes of this section:

30 (1) Forty-five days net operating expenses shall be  
31 calculated by dividing the provider's operating expenses  
32 during the immediately preceding fiscal year by 365, and  
33 multiplying that quotient by 45.

34 (2) "Net operating expenses" includes all expenses  
35 except the following:

36 (A) The interest and credit enhancement expenses  
37 factored into the provider's calculation of its long-term  
38 debt reserve obligation described in Section 1792.3.

39 (B) Depreciation or amortization expenses.



1 (C) An amount equal to the reimbursement paid to  
2 the provider during the past 12 months for services to  
3 residents other than residents holding continuing care  
4 contracts.

5 (D) Extraordinary expenses that the department  
6 determines may be excluded by the provider. A provider  
7 shall apply in writing for a determination by the  
8 department and shall provide supporting documentation  
9 prepared in accordance with generally accepted  
10 accounting principles.

11 (b) A provider that has been in operation for less than  
12 12 months shall calculate its net operating expenses by  
13 using its actual expenses for the months it has operated  
14 and, for the remaining months, the projected operating  
15 expense amounts it submitted to the department as part  
16 of its application for a certificate of authority.

17 *SEC. 57.35. Section 1792.5 is added to the Health and*  
18 *Safety Code, to read:*

19 1792.5. (a) The provider shall compute its liquid  
20 reserve requirement as of the end of the provider's most  
21 recent fiscal year end based on its audited financial  
22 statements for that period and, at the time it files its  
23 annual report, shall file a form acceptable to the  
24 department certifying all of the following:

25 (1) The amount the provider is required to hold as a  
26 liquid reserve, including the amounts required for the  
27 debt service reserve and the operating expense reserve.

28 (2) The qualifying assets, and their respective values,  
29 the provider has designated for its debt service reserve  
30 and for its operating reserve.

31 (3) The amount of any deficiency or surplus for the  
32 provider's debt service reserve and the provider's  
33 operating reserve.

34 (b) The provider shall also complete the same form  
35 and file it with the department within 45 days following  
36 the conclusion of each quarter during the provider's fiscal  
37 year. For each quarterly report, the amount the provider  
38 is required to designate for its debt reserve and operating  
39 expense reserve shall be based on the provider's audited



1 financial statements for its most recently completed fiscal  
2 year.

3 (c) For the purpose of calculating the amount held by  
4 the provider to satisfy its liquid reserve requirement, all  
5 qualifying assets used to satisfy the liquid reserve  
6 requirements shall be valued at their fair market value as  
7 of the end of the provider’s most recent quarter.  
8 Restricted assets that have guaranteed values and are  
9 designated as qualifying assets under paragraph (6) or  
10 (7) of subdivision (a) of Section 1792.2 may be valued at  
11 their guaranteed values.

12 *SEC. 57.36. Section 1792.6 is added to the Health and  
13 Safety Code, to read:*

14 1792.6. (a) Any provider offering a refundable  
15 contract, or other entity assuming responsibility for  
16 refundable contracts, shall maintain a refund reserve  
17 fund in trust for the residents. The amount of the refund  
18 reserve shall be revised annually by the provider and  
19 submitted to the department in conjunction with the  
20 annual report required by Section 1790. This trust fund  
21 reserve shall accumulate interest and earnings and shall  
22 be invested in any of the following:

23 (1) Qualifying assets as defined in Section 1792.2.

24 (2) Real estate, subject to all of the following  
25 conditions:

26 (A) ~~Upon and to~~ To the extent approved by the  
27 department, the trust account may invest up to 70  
28 percent of the refund reserves in real estate that is both  
29 used to provide care and housing for the holders of the  
30 refundable continuing care contracts and is located on  
31 the same campus where these continuing care contract  
32 holders reside.

33 (B) Investments in real estate shall be limited to 50  
34 percent of the providers’ net equity in the real estate. The  
35 net equity shall be the book value, assessed value, or  
36 current appraised value within 12 months prior to the end  
37 of the fiscal year, less any depreciation, and  
38 encumbrances, all according to audited financial  
39 statements acceptable to the department.



1 (b) Each refund reserve trust ~~fund~~ shall be established  
 2 at an institution qualified to be an escrow agent. The  
 3 escrow agreement between the provider and the  
 4 institution shall be in writing and include the terms and  
 5 conditions described in this section. The escrow  
 6 agreement shall be submitted to and approved by the  
 7 department before it becomes effective.

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

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

14 (2) Determine life expectancy of that individual ~~from~~  
 15 ~~the life expectancy table in paragraph (1) of subdivision~~  
 16 ~~(b) of Section 1791.2. If there is a couple, use the life~~  
 17 ~~expectancy for the individual with the longer life~~  
 18 ~~expectancy.~~ *using all of the following requirements:*

19 (A) *The following life expectancy table shall be used*  
 20 *in connection with all continuing care contracts:*

21

22	Age	Females	Males	Age	Females	Males
23	55	26.323	23.635	83	7.952	6.269
24	56	25.526	22.863	84	7.438	5.854
25	57	24.740	22.101	85	6.956	5.475
26	58	23.964	21.350	86	6.494	5.124
27	59	23.199	20.609	87	6.054	4.806
28	60	22.446	19.880	88	5.613	4.513
29	61	21.703	19.163	89	5.200	4.236
30	62	20.972	18.457	90	4.838	3.957
31	63	20.253	17.764	91	4.501	3.670
32	64	19.545	17.083	92	4.175	3.388
33	65	18.849	16.414	93	3.862	3.129
34	66	18.165	15.759	94	3.579	2.903
35	67	17.493	15.116	95	3.329	2.705
36	68	16.832	14.486	96	3.109	2.533
37	69	16.182	13.869	97	2.914	2.384
38	70	15.553	13.268	98	2.741	2.254
39	71	14.965	12.676	99	2.584	2.137
40	72	14.367	12.073	100	2.433	2.026



1	73	13.761	11.445	101	2.289	1.919
2	74	13.189	10.830	102	2.152	1.818
3	75	12.607	10.243	103	2.022	1.723
4	76	12.011	9.673	104	1.899	1.637
5	77	11.394	9.139	105	1.784	1.563
6	78	10.779	8.641	106	1.679	1.510
7	79	10.184	8.159	107	1.588	1.500
8	80	9.620	7.672	108	1.522	1.500
9	81	9.060	7.188	109	1.500	1.500
10	82	8.501	6.719	110	1.500	1.500

11

12 *(B) If there is a couple, the life expectancy for the*  
 13 *person with the longer life expectancy shall be used.*

14 *(C) The life expectancy table set forth in this*  
 15 *paragraph shall be used until expressly provided to the*  
 16 *contrary through the amendment of this section.*

17 *(D) For residents over 110 years of age, 1.500 years*  
 18 *shall be used in computing life expectancy.*

19 *(E) If a continuing care retirement community has*  
 20 *contracted with a resident under 55 years of age, the*  
 21 *continuing care retirement community shall provide the*  
 22 *department with the methodology used to determine*  
 23 *that resident's life expectancy.*

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

27 (3) For that resident, use an interest rate of 6 percent  
 28 or lower to determine from compound interest tables the  
 29 factor that, *when multiplied by one dollar (\$1),*  
 30 *represents the amount required, at the time the*  
 31 *computation is made to grow at, that will grow at the*  
 32 *assumed compound interest rate to one dollar (\$1) at the*  
 33 *end of the period of the life expectancy of the resident.*

34 (4) Multiply the refundable portion of the resident's  
 35 entry fee amount by the factor obtained in paragraph (3)  
 36 to determine the amount of reserve required to be  
 37 maintained.

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



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

5 (d) Withdrawals may be made from the trust ~~fund~~ to  
6 pay refunds when due under the terms of the refundable  
7 entrance fee contracts and when the balance in the trust  
8 ~~fund~~ exceeds the required refund reserve amount  
9 determined in accordance with subdivision (c).

10 (e) Deposits shall be made to the trust ~~fund~~ with  
11 respect to new residents when the entrance fee is  
12 received and in the amount determined with respect to  
13 that resident in accordance with subdivision (c).

14 (f) Additional deposits shall be made to the trust fund  
15 within 30 days of any annual reporting date on which the  
16 trust fund balance falls below the required reserve in  
17 accordance with subdivision (c) and the deposits shall be  
18 in an amount sufficient to bring the trust ~~fund~~ balance  
19 into compliance with this section.

20 (g) Providers who have used a method previously  
21 allowed by statute to satisfy their refund reserve  
22 requirement may continue to use that method.

23 SEC. 57.4. Article ~~6.6~~ 6.5 (commencing with Section  
24 1792.11) is added to Chapter 10 of Division 2 of the Health  
25 and Safety Code, to read:

26

27 Article ~~6.6~~— 6.5. Actuarial Study

28

29 1792.11. The Legislature finds and declares all of the  
30 following:

31 (a) In continuing care contracts, providers offer a  
32 wide variety of living accommodations and care  
33 programs for an indefinite or extended number of years  
34 in exchange for substantial payments by residents over  
35 the term of the contract.

36 (b) The annual reporting and reserve requirements  
37 for continuing care providers should address a provider's  
38 long-term solvency. The past statutes establishing reserve  
39 requirements did not satisfactorily address this issue.



1 (c) One method for comprehensively assessing a  
2 continuing care provider's long-term solvency, that may  
3 have significant potential benefits for residents,  
4 providers, and the department, is an actuarial study  
5 performed in compliance with Actuarial Standards of  
6 Practice Number 3 as adopted by the Actuarial Standards  
7 Board.

8 (d) The continuing care statutes should, during a test  
9 period sufficient to apply the actuarial study requirement  
10 to all appropriate providers, require providers to obtain  
11 and file with the department an actuarial study.

12 (e) Fundamental to the effectiveness of actuarial  
13 studies are the assumptions used to project costs and  
14 revenues, as well as the breadth of the data base from  
15 which many of the assumptions are derived. For this and  
16 other reasons, neither the issues that will arise during the  
17 department's management of the actuarial study  
18 requirement nor the immediate impact of the actuarial  
19 study requirement on the continuing care industry can  
20 be fully anticipated.

21 (f) In the context of the foregoing, it is in the public's  
22 interest that:

23 (1) The statutes applicable to continuing care  
24 retirement communities require all providers, with  
25 certain exceptions, to conduct a one-time comprehensive  
26 assessment of their long-term solvency and to report that  
27 assessment to the department.

28 (2) The statutes applicable to continuing care  
29 retirement communities implement a four-year trial  
30 program that requires specified continuing care  
31 providers, and applicants for a certificate of authority, to  
32 conduct an actuarial study.

33 (3) The stability and longevity of the continuing care  
34 industry not be threatened by the four-year test program  
35 or dissemination by the department of any provider's  
36 actuarial study within four years of the filing date for the  
37 actuarial study.

38 (4) During a four-year trial period, the department, as  
39 well as provider and resident representatives, assess the  
40 effectiveness of using actuarial studies to analyze the



1 long-term financial viability of the providers in  
2 California.

3 1792.12. (a) The department shall implement in  
4 conformance with this article a four-year trial program  
5 for examining, and reporting on, the long-term solvency  
6 of specified continuing care providers.

7 (b) Under the program, the department shall require  
8 providers to obtain an actuarial study conducted in  
9 compliance with the Actuarial Standards of Practice  
10 Number 3 and then to file their actuarial study with the  
11 department.

12 (c) It is the intent of the Legislature that the four-year  
13 trial program shall do both of the following:

14 (1) Allow the department to consider the  
15 effectiveness and role of actuarial studies in the  
16 department's discharge of its obligation to assess each  
17 provider's financial soundness.

18 (2) Allow providers, the department, and resident  
19 representatives to evaluate the actuarial study  
20 requirement, including the reliability of actuarial studies  
21 and their value if statutorily included in the regimen of  
22 continuing care providers' financial reporting and  
23 disclosure obligations.

24 (d) The department shall, during the four-year period  
25 following the filing due date for a provider's actuarial  
26 study required under this article, maintain the  
27 confidentiality of the actuarial study.

28 (e) The department's responsibility to manage the  
29 four-year trial program and review the providers'  
30 actuarial studies under this article represents a significant  
31 burden on its resources dedicated to its oversight of the  
32 continuing care industry. The department is specifically  
33 authorized to use third-party professional consultants as  
34 necessary to properly discharge its responsibilities under  
35 this article and to also allocate resources from the  
36 Continuing Care Provider Fee Fund as necessary to  
37 retain within the department the level of expertise  
38 required by the program.

39 (f) During the four-year trial program, the five  
40 hundred thousand dollar (\$500,000) ceiling on the



1 projected annual balance for the Continuing Care  
2 Provider Fee Fund specified in Section 1778 shall be  
3 increased to seven hundred fifty thousand dollars  
4 (\$750,000).

5 1792.13. (a) During the four-year trial period, the  
6 department shall continually assess the effectiveness of  
7 using actuarial studies to analyze the long-term financial  
8 position of the providers in California.

9 (b) On January 1, 2003, the department shall form a  
10 nine-member panel after consultation with the  
11 prominent ~~residents~~ *resident* associations, the prominent  
12 providers associations, and the Continuing Care Advisory  
13 Committee. The department shall appoint to the panel  
14 three resident representatives, three provider  
15 representatives, and three representatives of the  
16 department. The panel shall determine the value of the  
17 actuarial study requirement in terms of all of the  
18 following:

19 (1) Its effectiveness as a method for assessing a  
20 provider's long-term solvency.

21 (2) Its usefulness to the department in the discharge  
22 of its statutory oversight responsibilities regarding  
23 providers' financial soundness.

24 (3) Its usefulness to providers as a management tool.

25 (4) Its effectiveness as a method for disclosing  
26 financial information regarding providers to residents  
27 and potential residents of continuing care facilities.

28 (c) The expenses incurred by the panel's members  
29 shall be charged to the Continuing Care Provider Fee  
30 Fund in the same manner and to the same extent as the  
31 expenses incurred by the members of the Continuing  
32 Care Advisory Committee are charged to the Continuing  
33 Care Provider Fee Fund under this chapter.

34 (d) The panel shall issue a report to the department  
35 before February ~~14~~ 13, 2004. The report shall include the  
36 panel's findings and any statutory changes it proposes to  
37 implement its findings. The report shall specifically  
38 address whether the actuarial study requirement should  
39 continue as law, and if so, *it shall also reexamine how best*  
40 *to classify providers for purposes of the actuarial study*



1 *requirement and* recommend the appropriate interval  
2 between the ~~providers' required~~ actuarial studies  
3 *required for each type of provider*. If the panel advises  
4 against continuing the actuarial study requirement, the  
5 panel:

6 (1) May recommend an alternative process, or ratify  
7 existing processes for evaluating and reporting a  
8 provider's long-term solvency.

9 (2) Shall reexamine the adequacy of the reserve  
10 requirements stated in Article 6 (commencing with  
11 Section 1789) and make any recommendations it deems  
12 appropriate.

13 (3) Shall reexamine the disclosure obligations of  
14 providers in regard to their long-term solvency and make  
15 any recommendations it deems appropriate.

16 (e) The department shall submit recommendations  
17 ~~for legislation~~ to the Legislature as necessary to  
18 implement the recommendations of the panel ~~before~~  
19 ~~December 31, 2004~~. *through the enactment of legislation*  
20 *that would be effective on or before January 1, 2005*.

21 1792.14. (a) For purposes of this article, "actuarial  
22 study" means an analysis that addresses the current  
23 actuarial financial condition of a provider that is  
24 performed by an actuary in accordance with accepted  
25 actuarial principles and the standards of practice adopted  
26 by the Actuarial Standards Board. An actuarial study shall  
27 include all of the following:

- 28 (1) An actuarial report.
- 29 (2) A statement of actuarial opinion.
- 30 (3) An actuarial balance sheet.
- 31 (4) A cohort pricing analysis.
- 32 (5) A cash-flow projection.
- 33 (6) A description of the actuarial methodology,  
34 formulae, and assumptions.

35 (b) "Actuary" means a member in good standing of  
36 the American Academy of Actuaries who is qualified to  
37 sign a statement of actuarial opinion.

38 1792.15. (a) An actuarial study, prepared or  
39 reviewed by an actuary, shall be submitted to the  
40 department by every applicant *proposing a new*



1 continuing care retirement community except those  
2 applicants ~~proposing a new continuing care retirement~~  
3 ~~community~~ that, as of January 1, 2001, have fully satisfied  
4 the requirements of Section 1780, for issuance of a permit  
5 to accept deposits related to the proposed project. The  
6 actuarial study shall demonstrate that the proposed  
7 continuing care retirement community's financial  
8 position is in satisfactory actuarial balance and shall  
9 include all of the following:

10 (1) An actuarial balance sheet that demonstrates that,  
11 for a hypothetical cohort of new residents at the proposed  
12 continuing care retirement community, the sum of the  
13 entrance fees to be paid at occupancy plus the actuarial  
14 present value at occupancy of those residents' periodic  
15 fees equals the actuarial present value at occupancy of the  
16 costs of performing all obligations to those residents  
17 under their continuing care contracts, plus appropriate  
18 provision for surplus.

19 (2) Supporting detailed documentation for the  
20 actuarial balance sheet, including all of the following:

21 (A) A projection of future population flows, for the  
22 first 20 years, using appropriate mortality, morbidity,  
23 withdrawal, and other demographic assumptions.

24 (B) A projection of future health care needs and  
25 corresponding costs by level of care, for the first 20 years,  
26 using appropriate inflation factors, mortality, morbidity,  
27 withdrawal, and other demographic assumptions.

28 (C) A description of the actuarial data, assumptions,  
29 and methods used to create the projections in the  
30 actuarial report.

31 (3) A pricing analysis that demonstrates that, for a  
32 typical cohort of replacement residents at the continuing  
33 care retirement community, the sum of the entrance fees  
34 to be paid at occupancy plus the actuarial present value  
35 at occupancy of periodic fees paid by the residents equals  
36 the actuarial present value at occupancy of the costs of  
37 performing all obligations to the residents under their  
38 continuing care contracts, with appropriate provision for  
39 surplus.



1 (4) Cash-flow statements that project positive cash  
2 balances for a 20-year period.

3 (5) The opinion of the actuary that the data and  
4 assumptions used are reasonable and appropriate, the  
5 methods employed are consistent with sound actuarial  
6 principles and practices, and provision has been made for  
7 all actuarial liabilities and related statement items.

8 1792.16. (a) Each provider shall submit an actuarial  
9 study to the department during the years specified in  
10 Section 1792.18.

11 (b) All actuarial studies shall be prepared or reviewed  
12 by an actuary and shall include all of the following:

13 (1) An actuarial balance sheet that demonstrates  
14 whether the resources available for current residents,  
15 including the actuarial present value of periodic fees to  
16 be paid by the residents, is greater than or equal to the  
17 actuarial present value of the costs of performing all  
18 remaining obligations to those residents under their  
19 continuing care contracts, with appropriate provision for  
20 surplus.

21 (2) Supporting detailed documentation for the  
22 actuarial balance sheet, including all of the following:

23 (A) A projection of future population flows, for the  
24 next 20 years, using appropriate mortality, morbidity,  
25 withdrawal, and other demographic assumptions.

26 (B) A projection of future health care needs and  
27 corresponding costs, for the next 20 years, using  
28 appropriate inflation factors, mortality, morbidity,  
29 withdrawal, and other demographic assumptions.

30 (C) A description of the actuarial data, assumptions,  
31 and methods used to create the projections in the  
32 actuarial study.

33 (3) A pricing analysis that demonstrates whether, for  
34 a typical cohort of replacement residents at the  
35 continuing care retirement community, the sum of the  
36 entrance fees to be paid at occupancy plus the actuarial  
37 present value at occupancy of periodic fees paid by the  
38 residents equals the actuarial present value at occupancy  
39 of the costs of performing all remaining obligations to the



1 residents under their continuing care contracts, with  
2 appropriate provision for surplus.

3 (4) Cash-flow statements that project cash balances  
4 with respect to current and future residents for a period  
5 of at least 20 years.

6 (5) The opinion of the actuary that the data and  
7 assumptions used are appropriate, the methods  
8 employed are consistent with sound actuarial principles  
9 and practices, and whether provision has been made for  
10 all actuarial liabilities and related statement items.

11 1792.17. (a) For purposes of this section, the term  
12 “health care guarantee” means the degree to which the  
13 fees charged by a provider in a continuing care contract  
14 for health care, including assisted living and skilled  
15 nursing care, are less than the fees charged by the  
16 provider on a per diem basis to noncontinuing care  
17 residents. The three types of health care guarantees are  
18 extensive, limited, and nominal and are described as  
19 follows:

20 (1) An extensive health care guarantee exists in all life  
21 care contracts and prepaid contracts as well as *all* other  
22 continuing care contracts where a resident either:

23 (A) Pays the same or nearly the same monthly fee for  
24 health care, including temporary or permanent assisted  
25 living or skilled nursing care, as the resident was charged  
26 while residing in an independent living unit.

27 (B) Pays a rate for health care, including temporary or  
28 permanent assisted living or skilled nursing care, that,  
29 regardless of the duration of his or her health care needs,  
30 is 80 percent or less of the per diem rate charged to  
31 noncontinuing care contract residents.

32 (2) A limited health care guarantee exists in all  
33 continuing care contracts where the health care  
34 guarantee is not extensive or nominal.

35 (3) A nominal health care guarantee exists in all  
36 continuing care contracts where the resident is charged  
37 less than the per diem rate charged to noncontinuing care  
38 residents for health care for five or fewer days in any  
39 12-month period and otherwise pays on a per diem basis  
40 for all levels of health care.



1 (b) The department shall classify each provider as a  
2 Type I Provider, a Type II Provider, or a Type III  
3 Provider based on the following:

4 (1) A Type I Provider is a provider that has entered  
5 into a continuing care contract that includes an extensive  
6 health care guarantee.

7 (2) A Type II Provider is a provider to which both of  
8 the following apply:

9 (A) Has entered into a continuing care contract that  
10 includes a limited health care guarantee.

11 (B) Has not entered into any continuing care contract  
12 that includes an extensive health care guarantee.

13 (3) A Type III Provider is a provider that ~~does~~ *satisfies*  
14 either of the following:

15 (A) ~~Has~~ *It has only* entered into continuing care  
16 contracts that include health care guarantees ~~that are~~  
17 ~~nominal only~~ *nominal*.

18 (B) ~~Does~~ *It does* not charge entrance fees or monthly  
19 service fees, such as those providers who accept an  
20 assignment of assets and funds the costs of providing care  
21 with charitable contributions.

22 1792.18. (a) A provider shall file its actuarial study  
23 within 45 days after the due date for its annual report.  
24 Each provider that operates more than one continuing  
25 care retirement community shall prepare one actuarial  
26 study encompassing all its communities and shall be  
27 assigned a single date for filing its actuarial study. All  
28 providers shall file actuarial studies with the department  
29 during the years specified as follows:

30 (1) Each provider classified as a Type I Provider shall  
31 file an initial actuarial study following its annual reports  
32 filed during the 2001 calendar year. *A Type I Provider*  
33 *that has completed an actuarial study satisfying the*  
34 *requirements of this article during the 2000 calendar year*  
35 *may file that actuarial study with the department in order*  
36 *to satisfy the provider's obligation under this section.*

37 (2) ~~(A)~~ Each provider classified as a Type II Provider  
38 shall file an initial actuarial study according to the  
39 following schedule:

40 ~~(i)~~



1 (A) Six of the providers holding certificates of  
2 authority on January 1, 2001, *or a lesser number, at the*  
3 *department's discretion*, shall file their actuarial studies  
4 following their annual report filed during the 2001  
5 calendar year.

6 ~~(ii)-~~

7 (B) One-half of the remaining number of providers  
8 holding certificates of authority on January 1, 2001, shall  
9 file their actuarial studies following their annual reports  
10 filed during the 2002 calendar year.

11 ~~(iii)-~~

12 (C) The remaining providers holding certificates of  
13 authority on January 1, 2001, shall file their actuarial  
14 studies following their annual reports filed during the  
15 2003 calendar year.

16 ~~(iv) All Type II Providers shall be assigned a date for~~  
17 ~~filing their initial actuarial studies by the Continuing Care~~  
18 ~~Advisory Committee, as soon as practicable following~~  
19 ~~January 1, 2001.~~

20 ~~(B) Type II Providers that have completed an~~  
21 ~~actuarial study satisfying the requirements of this article~~  
22 ~~during the 2000 calendar year may request that the~~  
23 ~~department both:~~

24 ~~(i) Designate them as one of the providers that is~~  
25 ~~required to file an actuarial study in the 2001 calendar~~  
26 ~~year.~~

27 ~~(ii) Accept the provider's 2000 actuarial study in~~  
28 ~~satisfaction of the obligation to file an actuarial study in~~  
29 ~~the 2001 calendar year. The provider shall submit a copy~~  
30 ~~of its actuarial study with its request to the department.~~

31 ~~(C) The Continuing Care Advisory Committee shall~~  
32 ~~randomly select, among all other Type II Providers, those~~  
33 ~~providers that shall be required to file their actuarial~~  
34 ~~studies following their annual reports filed during the~~  
35 ~~2001, 2002, and 2003 calendar years.~~

36 (3) A provider classified as a Type III Provider *is shall*  
37 *not obligated by this article* to file an actuarial study  
38 ~~unless required to do so by the department under~~  
39 ~~subdivision (d).~~

40 ~~(b)-.~~



1 (b) As soon as practicable following January 1, 2001,  
2 the committee shall select randomly those Type II  
3 Providers that will be required to file their actuarial  
4 studies following their annual reports filed during the  
5 2001, 2002, and 2003 calendar years. A Type II Provider  
6 that has completed an actuarial study satisfying the  
7 requirements of this article during the 2000 calendar year  
8 may request that the department both designate the  
9 provider as one of the providers that is required to file an  
10 actuarial study in the 2001 calendar year and that the  
11 provider's 2000 calendar year actuarial study be accepted  
12 by the department in satisfaction of the provider's  
13 obligation to file an actuarial study in the 2001 calendar  
14 year. A provider shall submit to the department a copy of  
15 its 2000 calendar year actuarial study with its request.

16 (c) Applicants that have applications ~~that are~~ pending  
17 as of January 1, 2000, shall file an actuarial study as follows:

18 (1) Applicants that submitted an actuarial study with  
19 their application shall file their initial actuarial study as a  
20 provider during the year they file their first annual report  
21 after the earliest of the following occurs:

22 (A) The new continuing care retirement community  
23 reaches 85 percent occupancy.

24 (B) Thirty months following the issuance of a  
25 preliminary certificate of authority for the new  
26 continuing care retirement community.

27 (2) All other applicants shall file their initial actuarial  
28 study during the year they file their first annual report.

29 ~~(e)~~

30 (d) A provider shall pay a one thousand dollar (\$1,000)  
31 late fee if it fails to file its actuarial study on or before the  
32 date it is due. A provider shall pay an additional late fee  
33 of thirty-three dollars (\$33) per day for each day after the  
34 first 30 days that the actuarial study is late. All late fees due  
35 shall accompany the actuarial study when it is filed or late  
36 fees shall continue to accrue until paid. The late fees  
37 described in this subdivision are separate from, and  
38 accrue independently of, any other late fees that may  
39 apply if a provider fails to file its annual report when due.



1 The department may, at its discretion, waive this late fee  
2 upon a showing of good cause by the provider.

3 ~~(d) The department may require any provider to file  
4 an actuarial study on a more frequent basis than required  
5 under this section if any of the following conditions exist:~~

6 ~~(1) The provider's actuarial balance sheet shows a  
7 substantial negative net asset balance.~~

8 ~~(2) The provider's actuarial report demonstrates that  
9 the provider does not have sufficient financial resources  
10 to meet all its actuarial liabilities.~~

11 ~~(3) The discrepancy between the provider's actual  
12 experience and its actuarial study assumptions is material  
13 and may be detrimental to its actuarial financial  
14 condition.~~

15 ~~(4) The department has reason to believe that the  
16 provider is any of the following:~~

17 ~~(A) Insolvent.~~

18 ~~(B) In imminent danger of becoming insolvent.~~

19 ~~(C) In a financially unsound or unsafe condition.~~

20 ~~(D) In a condition such that it may otherwise be  
21 unable to fully perform its obligations pursuant to  
22 continuing care contracts.~~

23 1792.19. (a) Each actuarial study required of a  
24 provider by Section 1792.16 shall demonstrate that the  
25 provider's financial condition is in satisfactory actuarial  
26 balance, including an appropriate surplus, such that the  
27 provider has the financial resources to meet all its  
28 actuarial liabilities. A provider's financial condition is in  
29 satisfactory actuarial balance if its actuarial study includes  
30 all of the following:

31 (1) An actuarial balance sheet that demonstrates the  
32 resources available for current residents at the  
33 continuing care retirement community, including the  
34 actuarial present value of periodic fees to be paid by the  
35 residents, at least equals the actuarial present value of the  
36 costs of performing all remaining obligations to those  
37 residents under their continuing care contracts, with  
38 appropriate provision for surplus.

39 (2) A pricing analysis that demonstrates, for a typical  
40 cohort of replacement residents at the continuing care



1 retirement community, the sum of the entrance fees to  
2 be paid at occupancy plus the actuarial present value at  
3 occupancy of periodic fees paid by the residents equals  
4 the actuarial present value at occupancy of the costs of  
5 performing all remaining obligations to the residents  
6 under their continuing care contracts, with appropriate  
7 provision for surplus.

8 (3) Cash-flow statements that project positive cash  
9 balances with respect to current and future residents for  
10 a period of at least 20 years.

11 (4) The opinion of the actuary that provision has been  
12 made for all actuarial liabilities and related statement  
13 items.

14 (b) In the event that an actuarial study shows  
15 insufficient financial resources to meet all its actuarial  
16 liabilities or an actuarial balance sheet deficit, the  
17 actuarial report shall clearly state the implications of the  
18 provider's financial condition. The report shall  
19 specifically describe management's plans for improving  
20 its financial position to achieve an actuarial balance  
21 including an appropriate surplus. In addition, the  
22 provider shall submit with its actuarial study a detailed  
23 narrative addressing its actuarial deficiency and  
24 describing its plan to achieve actuarial balance.

25 1792.20. (a) Each provider that has submitted an  
26 actuarial study to the department shall, after the close of  
27 each fiscal year, review and compare its actual results  
28 from operations during the closed year to the assumptions  
29 made in its actuarial study for that year in a form  
30 prescribed by the department.

31 (b) Providers are not required to file the statement  
32 described in subdivision (a) in any year that they ~~shall~~ file  
33 an actuarial report.

34 1792.21. Any unpaid fines accruing or assessed under  
35 the provisions of this article as of January 1, 2005, when  
36 this article is repealed pursuant to Section 1792.22 shall  
37 remain payable and continue to accrue in the same  
38 manner as provided in this article.

39 1792.22. This article shall remain in effect only until  
40 January 1, 2005, and as of that date is repealed, ~~unless a~~



1 ~~later enacted statute, that is enacted before January 1,~~  
2 ~~2005, deletes or extends that date.~~

3 SEC. 58. Section 1793.5 of the Health and Safety Code  
4 is amended to read:

5 1793.5. (a) An entity that accepts deposits and  
6 proposes to promise to provide care without having a  
7 current and valid permit to accept deposits is guilty of a  
8 misdemeanor.

9 (b) An entity that accepts deposits and fails to place  
10 any deposit received into an escrow account as required  
11 by this chapter is guilty of a misdemeanor.

12 (c) An entity that executes a continuing care contract  
13 without holding a current and valid provisional  
14 certificate of authority or certificate of authority is guilty  
15 of a misdemeanor.

16 (d) An entity that abandons a continuing care  
17 retirement community or its obligations under a  
18 continuing care contract is guilty of a misdemeanor. An  
19 entity that violates this section shall be liable to the  
20 injured resident for treble the amount of damages  
21 assessed in any civil action brought by or on behalf of the  
22 resident in any court having proper jurisdiction. The  
23 court may, in its discretion, award all costs and attorney  
24 fees to the injured resident, if that resident prevails in the  
25 action.

26 (e) Each violation of subdivision (a), (b), (c), or (d)  
27 is subject to a fine not to exceed ten thousand dollars  
28 (\$10,000), or by imprisonment in the county jail for a  
29 period not to exceed one year, or by both.

30 (f) An entity that issues, delivers, or publishes, or as  
31 manager or officer or in any other administrative  
32 capacity, assists in the issuance, delivery, or publication of  
33 any printed matter, oral representation, or advertising  
34 material which does not comply with the requirements of  
35 this chapter is guilty of a misdemeanor.

36 (g) A violation of subdivision (f) by an entity will  
37 constitute cause for the suspension of all and any licenses,  
38 permits, provisional certificates of authority, and  
39 certificates of authority issued to that entity by any  
40 agency of the state.



1 (h) A violation under this section is an act of unfair  
2 competition as defined in Section 17200 of the Business  
3 and Professions Code.

4 SEC. 59. Section 1793.6 of the Health and Safety Code  
5 is amended to read:

6 1793.6. (a) The department may issue citations  
7 pursuant to this section containing orders of abatement  
8 and assessing civil penalties against any entity that  
9 violates Section 1771.2 or 1793.5.

10 (b) If upon inspection or investigation, the  
11 department has probable cause to believe that an entity  
12 is violating Section 1771.2 or 1793.5, the department may  
13 issue a citation to that entity. Each citation shall be in  
14 writing and shall describe with particularity the basis of  
15 the citation. Each citation shall contain an order of  
16 abatement. In addition to the administrative fines  
17 imposed pursuant to Section 1793.27, an entity that  
18 violates the abatement order shall be liable for a civil  
19 penalty in the amount of two hundred dollars (\$200) per  
20 day for violation of the abatement order.

21 (c) The civil penalty authorized in subdivision (b)  
22 shall be imposed if a continuing care retirement  
23 community is operated without a provisional certificate  
24 of authority or certificate of authority and the operator  
25 refuses to seek a certificate of authority or the operator  
26 seeks a certificate of authority and the application is  
27 denied and the operator continues to operate the  
28 continuing care retirement community without a  
29 provisional certificate of authority or certificate of  
30 authority, unless other remedies available to the  
31 department, including prosecution, are deemed more  
32 appropriate by the department.

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

36 (e) Within 15 days after service of a citation under this  
37 section, an entity may appeal in writing to the  
38 department with respect to the violations alleged, the  
39 scope of the order of abatement, or the amount of civil  
40 penalty assessed.



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

7 (g) If the entity cited under this section makes a timely  
8 appeal of the citation, the department shall provide an  
9 opportunity for a hearing. The department shall  
10 thereafter issue a decision, based on findings of fact,  
11 affirming, modifying, or vacating the citation or directing  
12 other appropriate relief. The proceedings under this  
13 section shall be conducted in accordance with the  
14 provisions of Chapter 5 (commencing with Section  
15 11500) of Part 1 of Division 3 of Title 2 of the Government  
16 Code, and the department shall have all the powers  
17 granted therein.

18 (h) After exhaustion of the review procedures  
19 specified in this section, the department may apply to the  
20 appropriate superior court for a judgment in the amount  
21 of the civil penalty and an order compelling the cited  
22 entity to comply with the order of abatement. The  
23 application, which shall include a certified copy of the  
24 final order of the department shall be served upon the  
25 cited entity who shall have five business days to file that  
26 entity's response in writing in the superior court. This  
27 period may be extended for good cause. Failure on the  
28 part of the cited entity to respond shall constitute grounds  
29 for entry of a default judgment against that entity. In the  
30 event a response is timely filed in superior court, the  
31 action shall have priority for trial over all other civil  
32 matters.

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



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

4 SEC. 60. Section 1793.7 of the Health and Safety Code  
5 is amended to read:

6 1793.7. A permit to accept deposits, a provisional  
7 certificate of authority, or a certificate of authority shall  
8 be for a continuing care retirement community forfeited  
9 by operation of law when any one of the following occurs:

10 (a) The applicant terminates marketing for the  
11 proposed continuing care retirement community.

12 (b) The applicant or provider surrenders to the  
13 department its residential care facility for the elderly  
14 license, the permit to accept deposits, provisional  
15 certificate of authority, or certificate of authority for a  
16 continuing care retirement community.

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

20 (d) A change occurs in the majority ownership of the  
21 continuing care retirement community or the certificate  
22 of authority holder.

23 (e) The applicant or provider merges with another  
24 entity.

25 (f) The applicant or entity makes a material change in  
26 a pending application which requires a new application  
27 pursuant to subdivision (c) of Section 1779.8.

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

31 (h) The applicant or provider abandons the  
32 continuing care retirement community or its obligations  
33 under the continuing care contracts.

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

36 SEC. 61. Section 1793.8 of the Health and Safety Code  
37 is amended to read:

38 1793.8. A Certificate of Authority shall be  
39 automatically inactivated when a provider voluntarily  
40 ceases to enter into continuing care contracts with new



1 residents. The provider shall notify the department of its  
2 intention to cease entering into continuing care contracts  
3 and shall continue to comply with all provisions of this  
4 chapter until all continuing care contract obligations  
5 have been fulfilled.

6 SEC. 62. Section 1793.9 of the Health and Safety Code  
7 is amended to read:

8 1793.9. (a) In the event of liquidation, all claims  
9 made against a provider based on the provider's  
10 continuing care contract obligations shall be preferred  
11 claims against all assets owned by the provider. However,  
12 these preferred claims shall be subject to any perfected  
13 claims secured by the provider's assets.

14 (b) If the provider is liquidated, residents who have  
15 executed a refundable continuing care contract shall  
16 have a preferred claim to liquid assets held in the refund  
17 reserve fund pursuant to Section 1793. This preferred  
18 claim shall be superior to all other claims from residents  
19 without refundable contracts or other creditors. If this  
20 fund and any other available assets are not sufficient to  
21 fulfill the refund obligations, each resident shall be  
22 distributed a proportionate amount of the refund reserve  
23 funds determined by dividing the amount of each  
24 resident's refund due by the total refunds due and  
25 multiplying that percentage by the total funds available.

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

30 SEC. 63. Section 1793.11 of the Health and Safety  
31 Code is amended to read:

32 1793.11. (a) Any transfer of money or property,  
33 pursuant to a continuing care contract found by the  
34 department to be executed in violation of this chapter, is  
35 voidable at the option of the transferor for a period of 90  
36 days from the execution of the transfer.

37 (b) Any deed or other instrument of conveyance shall  
38 contain a recital that the transaction is made pursuant to  
39 rescission by the resident within 90 days from the date of  
40 first occupancy.



1 (c) No action may be brought for the reasonable value  
2 of any services rendered between the date of transfer and  
3 the date the resident disaffirms the continuing care  
4 contract.

5 (d) With respect to real property, the right of  
6 disaffirmance or rescission is conclusively presumed to  
7 have terminated if a notice of intent to rescind is not  
8 recorded with the county recorder of the county in which  
9 the real property is located within 90 days from the date  
10 of first occupancy of the residential living unit.

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

16 (f) A transaction determined by the department to be  
17 in violation of this chapter is voidable at the option of the  
18 resident or his or her assignees or agents.

19 SEC. 64. Section 1793.13 of the Health and Safety  
20 Code is amended to read:

21 1793.13. (a) The department may require a provider  
22 to submit a financial plan, if either of the following  
23 applies:

24 (1) A provider fails to file a complete annual report as  
25 required by Section 1790.

26 (2) The department has reason to believe that the  
27 provider is insolvent, is in imminent danger of becoming  
28 insolvent, is in a financially unsound or unsafe condition,  
29 or that its condition is such that it may otherwise be  
30 unable to fully perform its obligations pursuant to  
31 continuing care contracts.

32 (b) A provider shall submit its financial plan to the  
33 department within 60 days following the date of the  
34 department's request. The financial plan shall explain  
35 how and when the provider will rectify the problems and  
36 deficiencies identified by the department.

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

39 (d) If the plan is approved, the provider shall  
40 immediately implement the plan.



1 (e) If the plan is disapproved, or if it is determined that  
2 the plan is not being fully implemented, the department  
3 may, after consultation with and upon consideration of  
4 the recommendations of the Continuing Care Advisory  
5 Committee, consult with its financial consultants to  
6 develop a corrective action plan at the provider's  
7 expense, or require the provider to obtain new or  
8 additional management capability approved by the  
9 department to solve its difficulties. A reasonable period,  
10 as determined by the department, shall be allowed for the  
11 reorganized management to develop a plan which,  
12 subject to the approval of the department and after  
13 review by the committee, will reasonably assure that the  
14 provider will meet its responsibilities under the law.

15 SEC. 65. Section 1793.15 of the Health and Safety  
16 Code is amended to read:

17 1793.15. (a) When necessary to secure an applicant's  
18 or a provider's performance of its obligations to  
19 depositors or residents, the department may record a  
20 notice or notices of lien on behalf of the depositors or  
21 residents. From the date of recording, the lien shall attach  
22 to all real property owned or acquired by the provider  
23 during the pendency of the lien, provided the property  
24 is not exempt from the execution of a lien and is located  
25 within the county in which the lien is recorded. The lien  
26 shall have the force, effect, and priority of a judgment  
27 lien.

28 (b) The department may record a lien on any real  
29 property owned by the provider if the provider's annual  
30 report indicates the provider has an unfunded statutory  
31 or refund requirement. A lien filed pursuant to this  
32 section shall have the effect, force, and priority of a  
33 judgment lien filed against the property.

34 (c) The department shall file a release of the lien if the  
35 department determines that the lien is no longer  
36 necessary to secure the applicant's or provider's  
37 performance of its obligations to the depositors or  
38 residents.

1 (d) Within 10 days following the department's denial  
2 of a request for a release of the lien, the applicant or  
3 provider may file an appeal with the department.

4 (e) The department's final decision shall be subject to  
5 court review pursuant to Section 1094.5 of the Code of  
6 Civil Procedure, upon petition of the applicant or  
7 provider filed within 30 days of service of the decision.

8 SEC. 66. Section 1793.17 of the Health and Safety  
9 Code is amended to read:

10 1793.17. (a) When necessary to secure the interests  
11 of depositors or residents, the department may require  
12 that the applicant or provider reestablish an escrow  
13 account, return previously released moneys to escrow,  
14 and escrow all future entrance fee payments.

15 (b) The department may release funds from escrow as  
16 it deems appropriate or terminate the escrow  
17 requirement when it determines that the escrow is no  
18 longer necessary to secure the performance of all  
19 obligations of the applicant or provider to depositors or  
20 residents.

21 SEC. 67. Section 1793.19 of the Health and Safety  
22 Code is amended to read:

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

28 SEC. 68. Section 1793.21 of the Health and Safety  
29 Code is amended to read:

30 1793.21. The department, in its discretion, may  
31 condition, suspend, or revoke any permit to accept  
32 deposits, provisional certificate of authority, or certificate  
33 of authority issued under this chapter if it finds that ~~any~~  
34 ~~of the following apply to~~ the applicant or provider *has*  
35 *done any of the following*:

36 ~~(a) The applicant or provider violated this chapter or~~  
37 *(a) Violated this chapter or* the rules and regulations  
38 adopted under this chapter.

39 ~~(b) The applicant or provider aided, abetted, or~~



- 1 (b) *Aided, abetted, or* permitted the violation of this  
2 chapter or the rules and regulations adopted under this  
3 chapter.
- 4 ~~(e) The provider's or applicant's license was~~  
5 (c) *Had a license* suspended or revoked pursuant to  
6 the licensing provisions of Chapter 2 (commencing with  
7 Section 1250) or Chapter 3.2 (commencing with Section  
8 1569).
- 9 ~~(d) The provider or applicant made a material~~  
10 (d) *Made a material* misstatement, misrepresentation,  
11 or fraud in obtaining the permit to accept deposits,  
12 provisional certificate of authority, or certificate of  
13 authority.
- 14 ~~(e) The provider or applicant demonstrated a lack of~~  
15 (e) *Demonstrated a lack of* fitness or trustworthiness.
- 16 ~~(f) The provider or applicant engaged in any~~  
17 (f) *Engaged in any* fraudulent or dishonest practices  
18 of management in the conduct of business.
- 19 ~~(g) The provider or applicant misappropriated,~~  
20 (g) *Misappropriated,* converted, or withheld moneys.
- 21 (h) After request by the department for an  
22 examination, access to records, or information, ~~the~~  
23 ~~provider or applicant~~ refused to be examined or to  
24 produce its accounts, records, and files for examination,  
25 or refused to give information with respect to its affairs,  
26 or refused to perform any other legal obligations related  
27 to an examination.
- 28 ~~(i) The provider's or applicant's unsound financial~~  
29 (i) *Manifested an unsound financial* condition.
- 30 ~~(j) The provider or applicant used such methods and~~  
31 (j) *Used methods and* practices in the conduct of  
32 business so as to render further transactions by the  
33 provider or applicant hazardous or injurious to the public.
- 34 (k) ~~The provider or applicant failed~~ *Failed* to maintain  
35 at least the minimum statutory reserves required by  
36 Section 1792.2.
- 37 ~~(l) The provider or applicant failed~~ *Failed* to maintain  
38 the reserve fund escrow account for prepaid continuing  
39 care contracts required by Section 1792.



1 ~~The provider or applicant failed~~ *Failed* to comply  
2 with the refund reserve requirements stated in Section  
3 1793.

4 ~~The provider or applicant failed~~ *Failed* to comply  
5 with the requirements of this chapter for maintaining  
6 escrow accounts for funds.

7 ~~The provider or applicant failed~~ *Failed* to file the  
8 annual report described in Section 1790.

9 ~~The provider or applicant violated~~ *Violated* a  
10 condition on its permit to accept deposits, provisional  
11 certificate of authority, or certificate of authority.

12 ~~The provider or applicant failed~~ *Failed* to comply  
13 with its approved financial and marketing plan, or to  
14 secure approval of a modified plan.

15 ~~The provider or applicant materially~~ *Materially*  
16 changed or deviated from an approved plan of operation  
17 without the prior consent of the department.

18 ~~The provider or applicant failed~~ *Failed* to fulfill his  
19 or her obligations under continuing care contracts.

20 ~~The provider or applicant made~~ *Made* material  
21 misrepresentations to depositors, prospective residents,  
22 or residents of a continuing care retirement community.

23 ~~The provider or applicant failed~~ *Failed* to submit  
24 proposed changes to continuing care contracts prior to  
25 use, or using a continuing care contract that has not been  
26 previously approved by the department.

27 ~~The provider or applicant failed~~ *Failed* to  
28 diligently submit materials requested by the department  
29 or required by the statute.

30 SEC. 69. Section 1793.23 of the Health and Safety  
31 Code is amended to read:

32 1793.23. (a) The department shall consult with and  
33 consider the recommendations of the Continuing Care  
34 Advisory Committee prior to conditioning, suspending,  
35 or revoking any permit to accept deposits, provisional  
36 certificate of authority, or certificate of authority.

37 (b) The provider shall have a right of appeal to the  
38 department. The proceedings shall be conducted in  
39 accordance with Chapter 5 (commencing with Section  
40 11500) of Part 1 of Division 3 of Title 2 of the Government



1 Code, and the department shall have all of the powers  
2 granted therein. A suspension, condition, or revocation  
3 shall remain in effect until completion of the proceedings  
4 in favor of the provider. In all proceedings conducted in  
5 accordance with this section, the standard of proof to be  
6 applied shall be by a preponderance of the evidence.

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

9 SEC. 70. Section 1793.25 of the Health and Safety  
10 Code is amended to read:

11 1793.25. (a) During the period that the revocation or  
12 suspension action is pending against the permit to accept  
13 deposits, provisional certificate of authority, or certificate  
14 of authority, the provider shall not enter into any new  
15 deposit agreements or continuing care contracts.

16 (b) The suspension or revocation by the department,  
17 or voluntary return of the provisional certificate of  
18 authority or certificate of authority by the provider, shall  
19 not release the provider from obligations assumed at the  
20 time the continuing care contracts were executed.

21 SEC. 71. Section 1793.27 of the Health and Safety  
22 Code is amended to read:

23 1793.27. (a) If the department finds that any entity  
24 has violated Section 1793.5 or one or more grounds exist  
25 for conditioning, revoking, or suspending a permit to  
26 accept deposits, provisional certificate of authority, or a  
27 certificate of authority issued under this chapter, the  
28 department, in lieu of the condition, revocation, or  
29 suspension, may impose an administrative fine upon an  
30 applicant or provider in an amount not to exceed one  
31 thousand dollars (\$1,000) per violation.

32 (b) The administrative fine shall be deposited in the  
33 Continuing Care Provider Fee Fund and shall be  
34 disbursed for the specific purposes of offsetting the costs  
35 of investigation and litigation and to compensate  
36 court-appointed administrators when continuing care  
37 retirement community assets are insufficient.

38 SEC. 72. Section 1793.29 of the Health and Safety  
39 Code is amended to read:



1 1793.29. In the case of any violation or threatened  
2 violation of this chapter, the department may institute a  
3 proceeding or may request the Attorney General to  
4 institute a proceeding to obtain injunctive or other  
5 equitable relief in the superior court in and for the county  
6 in which the violation has occurred or will occur, or in  
7 which the principal place of business of the provider is  
8 located. The proceeding under this section shall conform  
9 with the requirements of Chapter 3 (commencing with  
10 Section 525) of Title 7 of Part 2 of the Code of Civil  
11 Procedure, except that no undertaking shall be required  
12 of the department in any action commenced under this  
13 section, nor shall the department be required to allege  
14 facts necessary to show lack of adequate remedy at law,  
15 or to show irreparable loss or damage.

16 SEC. 73. Section 1793.50 of the Health and Safety  
17 Code is amended to read:

18 1793.50. (a) The department, after consultation with  
19 the Continuing Care Advisory Committee, may petition  
20 the superior court for an order appointing a qualified  
21 administrator to operate a continuing care retirement  
22 community, and thereby mitigate imminent crisis  
23 situations where elderly residents could lose support  
24 services or be moved without proper preparation, in any  
25 of the following circumstances:

26 (1) The provider is insolvent or in imminent danger of  
27 becoming insolvent.

28 (2) The provider is in a financially unsound or unsafe  
29 condition.

30 (3) The provider has failed to establish or has  
31 substantially depleted the reserves required by this  
32 chapter.

33 (4) The provider has failed to submit a plan, as  
34 specified in Section 1793.13, the department has not  
35 approved the plan submitted by the provider, the  
36 provider has not fully implemented the plan, or the plan  
37 has not been successful.

38 (5) The provider is unable to fully perform its  
39 obligations pursuant to continuing care contracts.



- 1 (6) The residents are otherwise placed in serious  
2 jeopardy.
- 3 (b) The administrator may only assume the operation  
4 of the continuing care retirement community in order to  
5 accomplish one or more of the following: rehabilitate the  
6 provider to enable it fully to perform its continuing care  
7 contract obligations; implement a plan of reorganization  
8 acceptable to the department; facilitate the transition  
9 where another provider assumes continuing care  
10 contract obligations; or facilitate an orderly liquidation of  
11 the provider.
- 12 (c) With each petition, the department shall include  
13 a request for a temporary restraining order to prevent the  
14 provider from disposing of or transferring assets pending  
15 the hearing on the petition.
- 16 (d) The provider shall be served with a copy of the  
17 petition, together with an order to appear and show cause  
18 why management and possession of the provider's  
19 continuing care retirement community or assets should  
20 not be vested in an administrator.
- 21 (e) The order to show cause shall specify a hearing  
22 date, which shall be not less than five nor more than 10  
23 days following service of the petition and order to show  
24 cause on the provider.
- 25 (f) Petitions to appoint an administrator shall have  
26 precedence over all matters, except criminal matters, in  
27 the court.
- 28 (g) At the time of the hearing, the department shall  
29 advise the provider and the court of the name of the  
30 proposed administrator.
- 31 (h) If, at the conclusion of the hearing, including such  
32 oral evidence as the court may consider, the court finds  
33 that any of the circumstances specified in subdivision (a)  
34 exist, the court shall issue an order appointing an  
35 administrator to take possession of the property of the  
36 provider and to conduct the business thereof, enjoining  
37 the provider from interfering with the administrator in  
38 the conduct of the rehabilitation, and directing the  
39 administrator to take steps toward removal of the causes



1 and conditions which have made rehabilitation  
2 necessary, as the court may direct.

3 (i) The order shall include a provision directing the  
4 issuance of a notice of the rehabilitation proceedings to  
5 the residents at the continuing care retirement  
6 community and to other interested persons as the court  
7 ~~shall~~ may direct.

8 (j) The court may permit the provider to participate  
9 in the continued operation of the continuing care  
10 retirement community during the pendency of any  
11 appointments ordered pursuant to this section and shall  
12 specify in the order the nature and scope of the  
13 participation.

14 (k) The court shall retain jurisdiction throughout the  
15 rehabilitation proceeding and may issue further orders as  
16 it deems necessary to accomplish the rehabilitation or  
17 orderly liquidation of the continuing care retirement  
18 community in order to protect the residents of the  
19 continuing care retirement community.

20 SEC. 74. Section 1793.56 of the Health and Safety  
21 Code is amended to read:

22 1793.56. (a) The appointed administrator is entitled  
23 to reasonable compensation.

24 (b) The costs compensating the administrator may be  
25 charged against the assets of the provider. When the  
26 provider's assets and assets from the continuing care  
27 retirement community are insufficient, the department,  
28 in its discretion, may compensate the administrator from  
29 the Continuing Care Provider Fee Fund.

30 (c) Any individual appointed administrator, pursuant  
31 to Section 1793.50, shall be held harmless for any  
32 negligence in the performance of his or her duties and the  
33 provider shall indemnify the administrator for all costs of  
34 defending actions brought against him or her in his or her  
35 capacity as administrator.

36 SEC. 75. Section 1793.58 of the Health and Safety  
37 Code is amended to read:

38 1793.58. (a) The department, administrator, or any  
39 interested person, upon due notice to the administrator,  
40 at any time, may apply to the court for an order



1 terminating the rehabilitation proceedings and  
2 permitting the provider to resume possession of the  
3 provider's property and the conduct of the provider's  
4 business.

5 (b) The court shall not issue the order requested  
6 pursuant to subdivision (a) unless, after a full hearing, the  
7 court has determined that the purposes of the proceeding  
8 have been fully and successfully accomplished and that  
9 the continuing care retirement community can be  
10 returned to the provider's management without further  
11 jeopardy to the residents of the continuing care  
12 retirement community, creditors, owners of the  
13 continuing care retirement community, and to the  
14 public.

15 (c) Before issuing any order terminating the  
16 rehabilitation proceeding the court shall consider a full  
17 report and accounting by the administrator regarding the  
18 provider's affairs, including the conduct of the provider's  
19 officers, employees, and business during the  
20 rehabilitation and the provider's current financial  
21 condition.

22 (d) Upon issuance of an order terminating the  
23 rehabilitation, the department shall reinstate the  
24 provisional certificate of authority or certificate of  
25 authority. The department may condition, suspend, or  
26 revoke the reinstated certificate only upon a change in  
27 the conditions existing at the time of the order or upon  
28 the discovery of facts which the department determines  
29 would have resulted in a denial of the request for an order  
30 terminating the rehabilitation had the court been aware  
31 of these facts.

32 SEC. 76. Section 1793.60 of the Health and Safety  
33 Code is amended to read:

34 1793.60. (a) If at any time the department  
35 determines that further efforts to rehabilitate the  
36 provider would not be in the best interest of the residents  
37 or prospective residents, or would not be economically  
38 feasible, the department may, with the approval of the  
39 Continuing Care Advisory Committee, apply to the court  
40 for an order of liquidation and dissolution or may apply



1 for other appropriate relief for dissolving the property  
2 and bringing to conclusion its business affairs.

3 (b) Upon issuance of an order directing the liquidation  
4 or dissolution of the provider, the department shall  
5 revoke the provider's provisional certificate of authority  
6 or certificate of authority.

7 SEC. 77. Section 1793.62 of the Health and Safety  
8 Code is amended to read:

9 1793.62. (a) The department, administrator, or any  
10 interested person, upon due notice to the parties, may  
11 petition the court for an order terminating the  
12 rehabilitation proceedings when the rehabilitation  
13 efforts have not been successful, the continuing care  
14 retirement community has been sold at foreclosure sale,  
15 the provider has been declared bankrupt, or the provider  
16 has otherwise been shown to be unable to perform its  
17 obligations under the continuing care contracts.

18 (b) The court shall not issue the order requested  
19 pursuant to subdivision (a) unless all of the following  
20 have occurred:

21 (1) There has been a full hearing and the court has  
22 determined that the provider is unable to perform its  
23 contractual obligations.

24 (2) The administrator has given the court a full and  
25 complete report and financial accounting signed by the  
26 administrator as being a full and complete report and  
27 accounting.

28 (3) The court has determined that the residents of the  
29 continuing care retirement community have been  
30 protected to the extent possible and has made such orders  
31 in this regard as the court deems proper.

32 SEC. 78. No reimbursement is required by this act  
33 pursuant to Section 6 of Article XIII B of the California  
34 Constitution because the only costs that may be incurred  
35 by a local agency or school district will be incurred  
36 because this act creates a new crime or infraction,  
37 eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section  
39 17556 of the Government Code, or changes the definition



- 1 of a crime within the meaning of Section 6 of Article
- 2 XIII B of the California Constitution.

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