Rincon del Rio
Senior Living Retirement Community
Young Enterprises, LP
April 2019

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I. PROJECT DESCRIPTION

Young Enterprises, L.P. ("Owner") is proposing a Continuing Care Retirement Community (CCRC) within a campus setting on approximately 215 acres within the unincorporated County of Nevada. The property consists of four existing parcels (APN's 057-240-017, -018, -019 and 057-130-013). The vast majority of the property is currently undeveloped. There is an existing single-family residential structure, detached garage, and River Barbecue Pavilion Structure on the property.

The campus-style design is clustered in the western 40-acre portion of the 215-acre property. Primary access is provided via Rincon Way off of State Route 49. Emergency access will be provided via Rodeo Flat Road at the northeast corner of the property. The project is within the boundaries of the Nevada Irrigation District (NID) and treated water is available to serve the project. The project is also in the Lake of the Pines Zone of the County Sanitation District #1 and sewer service is available to the site

The project will be constructed in 10 phases. The first 2 phases will include access roads, infrastructure improvement, and some residential units. Phase One will include construction of the sewer and water system, primary and emergency access roads, gatehouse, 14 cottage units and four 5-plex condominium units. The remaining phases include the buildout of the project as shown on the Phasing Exhibit Plan on the Tentative Map with the Group Housing Memory/Assisted Living facility proposed in Phase 7 in order to allow for base campus population to be established.

The property has a General Plan Land Use Designation of Planned Development – Continuing Care Retirement Community (PD-CCRC) and Zoning Designation of Planned Development – Continuing Care Retirement Community (PD-CCRC).

The Rincon del Rio Project has been designed as a clustered Continuing Care Retirement Community (CCRC) "campus" which meets the intent of the Planned Development – Continuing Care Retirement Community (PD-CCRC) General Plan and Zoning Designations on the property. The project is designed to minimize impacts to the site's resources by preserving a large area of open space and clustering the development, which will limit the construction disturbance area to an envelope of approximately 40 acres located on the western half of the site. This allows for more than 170 acres (80%), more or less, of open space.

This Continuing Care Retirement Communities (CCRC's) offer services and housing in an "age restricted campus setting" that includes independent living, memory/assisted living options, physical rehabilitation, food service, social activities, and cleaning and home maintenance services. Seniors who are independent may live in a single-family cottage or bungalow home, attached condominium unit, or village loft design within a campus setting where the residents can rely on security and services designed to allow one to "age in place". The Rincon del Rio campus is designed to serve adults 60 years and older, who are seeking to downsize their living environment but are still physically and socially active. Occupancy within the CCRC will be by fee title to the residential unit selected.

The campus offers seniors a variety of housing options, all of which will be constructed with Universal Design principles aimed at ensuring an age-in-place option, no matter how challenging the circumstance.

Rincon del Rio is designed to serve a senior population of 415 people within 345 living units consisting of the following:

- Independent Living (Detached) Cottages and Bungalows
- Independent Living 5-plex Condominium Units
- Independent living Condominium Apartment Units
- Independent Living Village Center Loft Condominium Units
- Group Home Memory/Assisted Living facility

The Rincon del Rio CCRC also offers a self-contained Village environment with a variety of amenities and services including, but not limited to the following:

Transportation - The project will provide a minimum of two para-transit vehicles, ADA equipped for the purposes of transporting residents within the facility to various business appointments, grocery and service needs, recreation and special events. Transportation will be provided on a daily basis. The Project access will come from Rincon Way. Rincon Way will be widened to two 10-foot lanes and resurfaced within the existing 30-foot deeded easement. A 20- foot emergency access road will be constructed from the project development area east to connect with Rodeo Flat Road. This road will be for emergency purposes only and gated to restrict public access.

Dining - The project will provide the main dining facility for daily meals. In addition, food service venues such as lunch café/bistro, ice cream parlor, a coffee shop/book store, and light eating areas will be provided in the Village. Meals prepared in the facility can be delivered to individual residences or residents can dine in the main dining or the café/bistro facility.

Laundry - Washers and dryers will available for each independent unit. In addition, contract laundry services will be available.

Care - The project will provide on-site EMT personnel and contract medical care may be provided from contract doctors providing geriatrics care for the residents.

Indoor & Outdoor Recreation - The project provides over 4 miles of improved walking trails, and soft surface trails throughout the property, general picnic areas and social gathering areas along the Bear River, raised-bed community gardens, aquatic center, fitness center, bocce ball courts, tennis courts and pickleball area. Fitness and wellness classes will be provided. These amenities are dispersed throughout the project development area. A 1.7-acre Village Park will contain the Aquatic Center building along with several miles of soft surface trails meandering through the open space area and along the Bear River will be included.

Daily Services - Daily services for all residents will include a grocery & sundry store, beauty shop/hair salon, barber shop, post office/mailbox room, personal business/computer center, appointment banking, theater, library, retail gift shop, and arts/crafts studio.

II. ECONOMIC IMPACT

The Economic analysis for the Rincon del Rio project, prepared by Applied Development Economics, Inc. summarized the following key points regarding the economic impact for the local economy:

- The project would produce about forty-six jobs. The market demand for senior housing far exceeds supply in the area so the project will not increase population.
- Residents of Rincon del Rio will annually spend **$4.6 Million** at a variety of commercial stores and businesses, providing the area with valuable sales tax revenue.
- Of this $4.6 Million, **$4.1 Million** will be spent at retail stores, and the balance at selected service businesses.
- The project will generate **$33,000 in gross retail sales tax** and can support approximately 12,900 square feet of commercial building space.
- Of the $4.6 million in household spending, the greater Grass Valley / Combie Road area will capture $852,000 and $1.4 Million, respectively.
- The project will generate $771,000 in food store spending of which $470,000 will be spent in the greater Grass Valley / Combie Road areas.
- The project will generate $444,000 of spending on eating and drinking places of which $267,000 will be spent in the greater Grass Valley / Combie Road areas.
- A total of 69% of total drugstore spending will take place in the greater Grass Valley / Combie Road areas.
- Rincon del Rio will generate a net fiscal surplus to Nevada County of approximately $1.7 Million annually.
- The effect on Nevada County services is lower than the typical residential subdivision.
- Rincon del Rio will directly account for $2.7 million in new economic activity annually.
- The forty-six full times jobs will have an annual payroll of $1.7 million.
- The multiplier effects of Rincon del Rio will provide an overall benefit to the local economy of $4.7 million.
- Construction will create approximately $72 million in economic activity. The multiplier effect is approximately $113 Million.
- The multiplier increase of employment creation will generate 966 jobs with $47 million of employee income.

Note: This analysis was conducted May 28, 2009. Likely economic benefits are higher due to the passage of time.

Note: Economic Impacts to Nevada County do not account for property tax increases resulting from market activity under Proposition 13 and the underlying benefit to the county as a result of Rincon del Rio becoming an equity / fee-simple model, rather than as a non-equity campus with a frozen Proposition 13 tax basis.

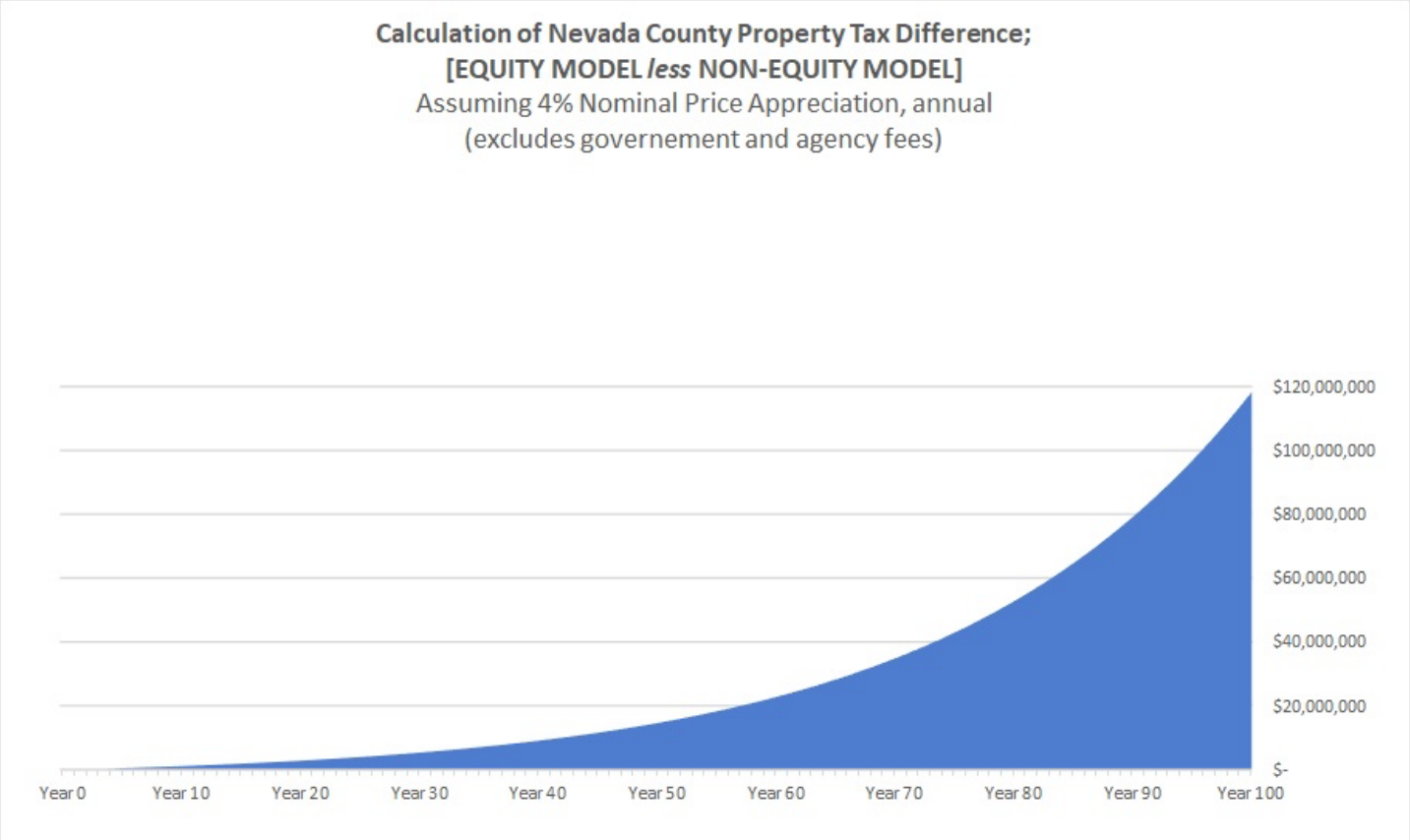
Fees due to Nevada County and other Public Agencies upon full build-out of Rincon del Rio:

Estimated Mitigation Fees, Full Buildout of Rincon del Rio	
$ 4,244,955	Nevada Irrigation District
$ 200,000	PG&E / AT&T
$ 3,233,230	LOP Wastewater Treatment Plant
$ 218,238	Higgins Fire Department
$ 324,275	Nevada Union School District
$ 442,600	Nevada County Building Department
$ 1,588,343	Public Works / Engineering
$ 6,331	Bear River Parks & Recreation
$ 1,025,797	Contingency (10%)
$ 11,283,770	Total Fees generated to Nevada County and associated Public Agencies

CCRC Property Tax Benefit to Nevada County: Equity Model vs. Non-Equity Model (using Prop 13 values)

NEVADA COUNTY PROPERTY TAX SUMMARY (excludes agency fees)					EQUITY MODEL	NON-EQUITY MODEL	QUALIFYING NON-PROFIT	
	Average House Value with 4% Annual Inflation	Number of Units	Probable Aggregate Property Value	Probable Aggregate Assessed Value	Prop Tax Revenue, Effective Average Tax Rate, South County: 1.025% - 1.05% per Tina Vernon	Prop Tax Revenue, Effective Average Tax Rate, South County: 1.025% - 1.05% on YEAR 0 Assessed Construction Cost - FROZEN under Prop 13	Non-Profit Status, Qualifying Religious or Other Entity	NEVCO Property Tax Difference; EQUITY MODEL less NON-EQUITY MODEL
Year 0	$ 625,000.00	345	$ 215,625,000	$ 215,625,000	$ 2,479,688	$ 2,479,688	NEGLIGIBLE	$ -
Year 1	$ 650,000.00	345	$ 224,250,000	$ 215,650,875	$ 2,479,985	$ 2,479,688	NEGLIGIBLE	$ 298
Year 2	$ 676,000.00	345	$ 233,220,000	$ 224,375,580	$ 2,580,319	$ 2,479,688	NEGLIGIBLE	$ 100,632
Year 3	$ 703,040.00	345	$ 242,548,800	$ 233,462,549	$ 2,684,819	$ 2,479,688	NEGLIGIBLE	$ 205,132
Year 4	$ 731,161.60	345	$ 252,250,752	$ 242,907,772	$ 2,793,439	$ 2,479,688	NEGLIGIBLE	$ 313,752
Year 5	$ 760,408.06	345	$ 262,340,782	$ 252,735,073	$ 2,906,453	$ 2,479,688	NEGLIGIBLE	$ 426,766
Year 6	$ 790,824.39	345	$ 272,834,413	$ 262,970,400	$ 3,024,160	$ 2,479,688	NEGLIGIBLE	$ 544,472
Year 7	$ 822,457.36	345	$ 283,747,790	$ 273,609,263	$ 3,146,507	$ 2,479,688	NEGLIGIBLE	$ 666,819
Year 8	$ 855,355.66	345	$ 295,097,701	$ 284,553,634	$ 3,272,367	$ 2,479,688	NEGLIGIBLE	$ 792,679
Year 9	$ 889,569.88	345	$ 306,901,610	$ 295,935,779	$ 3,403,261	$ 2,479,688	NEGLIGIBLE	$ 923,574
Year 10	$ 925,152.68	345	$ 319,177,674	$ 307,773,210	$ 3,539,392	$ 2,479,688	NEGLIGIBLE	$ 1,059,704
Year 11	$ 962,158.79	345	$ 331,944,781	$ 320,084,139	$ 3,680,968	$ 2,479,688	NEGLIGIBLE	$ 1,201,280
Year 12	$ 1,000,645.14	345	$ 345,222,572	$ 332,887,504	$ 3,828,206	$ 2,479,688	NEGLIGIBLE	$ 1,348,519
Year 13	$ 1,040,670.94	345	$ 359,031,475	$ 346,203,004	$ 3,981,335	$ 2,479,688	NEGLIGIBLE	$ 1,501,647
Year 14	$ 1,082,297.78	345	$ 373,392,734	$ 360,051,124	$ 4,140,588	$ 2,479,688	NEGLIGIBLE	$ 1,660,900
Year 15	$ 1,125,589.69	345	$ 388,328,443	$ 374,453,169	$ 4,306,211	$ 2,479,688	NEGLIGIBLE	$ 1,826,524
Year 16	$ 1,170,613.28	345	$ 403,861,581	$ 389,431,296	$ 4,478,460	$ 2,479,688	NEGLIGIBLE	$ 1,998,772
Year 17	$ 1,217,437.81	345	$ 420,016,044	$ 405,008,548	$ 4,657,598	$ 2,479,688	NEGLIGIBLE	$ 2,177,911
Year 18	$ 1,266,135.32	345	$ 436,816,686	$ 421,208,890	$ 4,843,902	$ 2,479,688	NEGLIGIBLE	$ 2,364,215
Year 19	$ 1,316,780.73	345	$ 454,289,354	$ 438,057,246	$ 5,037,658	$ 2,479,688	NEGLIGIBLE	$ 2,557,971
Year 20	$ 1,369,451.96	345	$ 472,460,928	$ 455,579,535	$ 5,239,165	$ 2,479,688	NEGLIGIBLE	$ 2,759,477
Year 21	$ 1,424,230.04	345	$ 491,359,365	$ 473,802,717	$ 5,448,731	$ 2,479,688	NEGLIGIBLE	$ 2,969,044
Year 22	$ 1,481,199.24	345	$ 511,013,739	$ 492,754,825	$ 5,666,680	$ 2,479,688	NEGLIGIBLE	$ 3,186,993
Year 23	$ 1,540,447.21	345	$ 531,454,289	$ 512,465,018	$ 5,893,348	$ 2,479,688	NEGLIGIBLE	$ 3,413,660
Year 24	$ 1,602,065.10	345	$ 552,712,461	$ 532,963,619	$ 6,129,082	$ 2,479,688	NEGLIGIBLE	$ 3,649,394
Year 25	$ 1,666,147.71	345	$ 574,820,959	$ 554,282,164	$ 6,374,245	$ 2,479,688	NEGLIGIBLE	$ 3,894,557
Year 26	$ 1,732,793.62	345	$ 597,813,797	$ 576,453,451	$ 6,629,215	$ 2,479,688	NEGLIGIBLE	$ 4,149,527
Year 27	$ 1,802,105.36	345	$ 621,726,349	$ 599,511,589	$ 6,894,383	$ 2,479,688	NEGLIGIBLE	$ 4,414,696
Year 28	$ 1,874,189.57	345	$ 646,595,403	$ 623,492,052	$ 7,170,159	$ 2,479,688	NEGLIGIBLE	$ 4,690,471
Year 29	$ 1,949,157.16	345	$ 672,459,219	$ 648,431,734	$ 7,456,965	$ 2,479,688	NEGLIGIBLE	$ 4,977,277
Year 30	$ 2,027,123.44	345	$ 699,357,588	$ 674,369,004	$ 7,755,244	$ 2,479,688	NEGLIGIBLE	$ 5,275,556
Year 31	$ 2,108,208.38	345	$ 727,331,892	$ 701,343,764	$ 8,065,453	$ 2,479,688	NEGLIGIBLE	$ 5,585,766
Year 32	$ 2,192,536.72	345	$ 756,425,167	$ 729,397,514	$ 8,388,071	$ 2,479,688	NEGLIGIBLE	$ 5,908,384
Year 33	$ 2,280,238.19	345	$ 786,682,174	$ 758,573,415	$ 8,723,594	$ 2,479,688	NEGLIGIBLE	$ 6,243,907
Year 34	$ 2,371,447.71	345	$ 818,149,461	$ 788,916,351	$ 9,072,538	$ 2,479,688	NEGLIGIBLE	$ 6,592,851
Year 35	$ 2,466,305.62	345	$ 850,875,439	$ 820,473,005	$ 9,435,440	$ 2,479,688	NEGLIGIBLE	$ 6,955,752
Year 36	$ 2,564,957.85	345	$ 884,910,457	$ 853,291,926	$ 9,812,857	$ 2,479,688	NEGLIGIBLE	$ 7,333,170
Year 37	$ 2,667,556.16	345	$ 920,306,875	$ 887,423,603	$ 10,205,371	$ 2,479,688	NEGLIGIBLE	$ 7,725,684
Year 38	$ 2,774,258.41	345	$ 957,119,150	$ 922,920,547	$ 10,613,586	$ 2,479,688	NEGLIGIBLE	$ 8,133,899
Year 39	$ 2,885,228.74	345	$ 995,403,916	$ 959,837,369	$ 11,038,130	$ 2,479,688	NEGLIGIBLE	$ 8,558,442
Year 40	$ 3,000,637.89	345	$ 1,035,220,073	$ 998,230,863	$ 11,479,655	$ 2,479,688	NEGLIGIBLE	$ 8,999,967

CCRC Property Tax Benefit to Nevada County: Equity Model vs. Non-Equity Model (Summary):



Property Tax Collection for Nevada County: EQUITY MODEL less NON-EQUITY MODEL

	Total Cost	Annualized Cost
10 Year Cost	$ 5,033,828	$ 503,383
20 Year Cost	$ 24,431,044	$ 1,221,552.19
30 Year Cost	$ 65,052,220	$ 2,168,407.33
40 Year Cost	$ 137,090,041	$ 3,427,251.02
50 Year Cost	$ 255,632,171	$ 5,112,643.43
60 Year Cost	$ 443,012,040	$ 7,383,534.00
70 Year Cost	$ 732,288,577	$ 10,461,265.39
80 Year Cost	$ 1,172,397,076	$ 14,654,963.45
90 Year Cost	$ 1,835,773,723	$ 20,397,485.81
100 Year Cost	$ 2,829,641,771	$ 28,296,417.71

III. RINCON DEL RIO OPERATION MODEL

CCRC's are attractive for seniors who find themselves living in increasing social isolation as they age, who would like to be immersed in a hospitable environment with other people with similar interests, and prefer to responsibly plan for their long-term health care needs in order to remain independent.

Rincon del Rio is an Equity Model CCRC without the contractual perplexity and financial disadvantages sited by many potential residents of a typical CCRC. Rincon del Rio's defining characteristic is the combination of service-enriched housing (physical and social needs) with a continuum-of-care paradigm. The distinguishing attribute of this project is the financial vehicle exercised by potential residents to obtain membership: Rincon del Rio is an equity model which allows community members to *purchase* a home within the development, thus availing themselves of the advantages of both home ownership and the many services and amenities being offered within the community.

The purpose of the ownership and management structure at the Rincon del Rio is to give Homeowners the financial and tax advantages of homeownership, with essentially the same freedom from managerial responsibility enjoyed in rental or entrance fee communities.

Structure of the Community:

Homeowners' purchase of a residence includes a membership in the Homeowners' Association ("HOA"). The HOA will have a group membership in the Reserve. Reserve membership includes, for each HOA member, a continuing care contract allowing priority access to the Reserve's care facilities.

The land on which the Community is built, is subdivided into the following areas: (i) the Residential Areas; and (ii) the hospitality areas ("The Reserve"). The Residential Areas are further subdivided into single family units ("Residences"), Condominium Units and the Common Areas.

The Residential Areas consist of: (i) the Residences, which consist of lots with Homes or Cottages (ii) individual airspace Condominium Units; and (iii) Common Areas which will include the roads, landscaping and other improvements connecting the Residences, as well as the Condominium Building Common Areas including but not limited to the land underlying the roads and the Condominium Building, and all of the structural and mechanical components, hallways and other areas surrounding the airspace Condominium Units (the "Common Areas"). The Residences and Condominium Units are owned in fee simple by Homeowners and Homeowners have an undivided pro rata ownership share in the Common Areas based upon a formula set forth in the Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Common Interest Ownership for Rincon del Rio ("CC&Rs") for each Residence and Condominium Unit.

The Reserve consists of: (i) on-campus assisted living and/or memory care facility (the "Care Center") and (ii) hospitality service areas including but not limited to: a working farm, raised planting boxes, extensive trail system, other outdoor gathering areas and amenities such as group barbecue area, beach volleyball area, hilltop recreational and picnic site, homestead gazebo site, tennis, pool and bocce ball court facilities, farmer's stand, café/bistro, multiple dining venues and on-site supporting kitchen(s), fitness center, swimming pool(s), business center, mail room, lounge, gathering areas, administrative spaces and back of house areas. The Reserve also includes all fixtures, furniture and equipment within these areas. The Reserve also includes the home currently owned and occupied by the Young family.

The CCRC:

Homeowners will receive as part of their service package a continuing care contract giving them priority access to care at the community's assisted living and memory care facilities. The sponsor, or its lessee, will apply to the California Department of Social Services for a Certificate of Authority to offer continuing care contracts under Health & Safety Code sections 1770 et seq. Note that H&S Code §1787(b) requires that all continuing care contract forms be approved by the Department of Social Services prior to use, and the sponsor/lessee will comply with all reporting and other requirements for continuing care providers.

Rincon del Rio will be a licensed CCRC from the beginning, and during the early phases will be able to provide in home care as a Residential Care Facility for the Elderly prior to completion of the Assisted Living and Memory Care units. As the phases are completed the community will provide to residents the opportunity to receive in home assistance as set forth in the H&S Code, and will then have priority access to the Assisted Living and Memory Care units under the continuing care contracts.

The following notes regarding recent regulation impacting CCRCs in California may assist with understanding the difference between a non-equity and an equity model CCRC:

SB 939 Bill Monning – June, 2016

Entrance fees for CCRCs in California can range from $550,000 to $1.5+ million a unit. Many residents sell their homes and assets to cover the fee. When the resident 'vacates' the CCRC, a pre-agreed upon percentage of the entrance fee is refunded. Refunds range from 0 to 90% or are pro-rated based on the years lived in the CCRC. However, no community member ever receives a refund of the entire entry fee, much less appreciation. CCRC's also require a monthly fee that *used* to be between $4,000 – $6,000—none of which is refundable.

The law at the time Rincon del Rio was initially approved was as follows: "*The return on an entrance fee, i.e. 'lump-sum payment,' in a CCRC contract is 'conditioned upon resale' of a unit."* There was no definitive timeline for the refund; but obviously, reselling the unit was a top priority in almost all situations.

However, a community in San Diego (high-rise on the beach), had a waiting list so long they built another tower—to which they steered potential residents. A woman in the older tower died and her son couldn't get his money for several years because the Sponsor was showing only the new units.

This singular case prompted a new law, SB 939. This law places new financial burdens on CCRCs that experience even minor delays in reselling units. SB 939 requires the refund portion of the entrance fee to be subject to a fixed interest rate of 4 percent after 180 days of the property being vacated, and a 6 percent interest rate after 240 days. This law had a serious impact on the actuarial tables and reserves utilized by CCRC's to remain operational. The law would make things particularly difficult during a hard recession or if California were to adopt a stringent Estate Tax causing older residents to consider a move to other states.

As with any artificial restraint like SB 939, there are unintended consequences. Many CCRC operators found a solution to the liquidity jeopardy created by the new law: Water-down the entry fees to around $250,000 - $350,000. (That would mean an operator could return about 3 entry fees in place of refunding 90% of $1M.) Since communities can't remain solvent with those reduced entry fees, operators upped the monthly fees to $8,500 - $9,500 and more. Residents are not entitled to any percentage of refund of monthly fees.

This change in contractual obligation created constraints for new CCRC Communities. One choice would be to build very inexpensive homes or charge steeper monthly fees. Rincon del Rio opted for a different alternative which is a Type E CCRC Contract.

IV. SUMMARY OF CARE OPTIONS – RINCON DEL RIO CARE

Continuing Care Retirement Communities or Lifecare Communities can be entry-fee or equity models. In an entry fee-community, residents pay a sizeable upfront charge in addition to monthly fees. If the resident needs advanced care, depending on the contract type, the standard monthly fee does not increase even though the cost of advanced care is greater. (There are minor COLA increases.)

Entry-fee CCRCs are basically very expensive long-term care insurance products. One way to think of this is as a pre-paid healthcare vehicle. All community members are required to pay the sizeable entry fee whether-or-not they may need advanced-care services in the future.

With this mindset, many older people who sense their or their spouse's health declining 'self-select'. They move to a CCRC knowing they will most likely be using the advanced care but will be paying rates set by the standard community monthly fee, which is typically lower than market rates for Assisted Living or Memory Care. This drives the cost to enter the community ever upward.

Fees charged by entry-fee models are entirely about risk set out by contract type.

Type A, Full Risk- The resident pays for *health-care benefits* with the entry fee and monthly fees thereafter. The CCRC therefore assumes the long-term care risk. It is known as a "life-care" contract. While inflation and added services may be put on top of the monthly fee, the entrance fee will have already been paid and the base rate of the monthly fee will stay the same no matter how long the resident remains in Assisted Living, Memory Care, or Skilled Nursing. Although no longer residing in independent living accommodations, residents receiving advanced care are not eligible for the entry fee refund. Type A contracts are very expensive . . . in part because of the 'self-selection' explained above. Residents must use the advanced care facilities within the community.

> *Fewer and fewer communities are offering Type A Contacts, for a number of reasons including the high cost of advanced care and more financially sophisticated seniors. The **Rule of 72** is a simple way to determine how long an investment will take to double given a fixed annual rate of interest. By dividing **72** by the annual rate of return, investors obtain a rough estimate of how many years it will take for the initial investment to duplicate itself.*
>
> *Therefore, an entry fee of $1M (not unusual) invested at 5-7% will double in about 7 to 13 years. On average, a CCRC resident in the United States might reside in the independent living for 10-12 years, the assisted living or memory care for 1-2 years, and sometimes skilled nursing for 1-2 years.*

Type B- The cost of advanced care attributable to CCRC is limited contractually. Residents are allowed a limited number of days living in advanced care at the standard monthly rate, but then are responsible to pay for services at the market rate. Many residents who choose this type of contract supplement their potential obligation with long-term care insurance. Residents must use the advanced care facilities located within the community.

Type C, Fee for Service- With this contract type, there is usually a smaller entrance fee. The usual monthly fees apply. If advanced care is needed, residents will pay market rate.

Type D, Fee for Service- Residents pay a more modest entrance fee as well as monthly fees. If residents need to be moved to a higher level of care, they pay *an additional entrance fee* as well as current market rates for advanced care.

Type D, Equity- Usually there is no or a small entrance fee. The resident purchases their home from the community and standard monthly fees apply. If the resident needs advanced care, the community sells the home. The proceeds, less repairs, etc., are then put in a special fund that the resident draws upon to pay for advanced care. Residents must utilize the advanced care facilities offered within the community.

Equity Model Contract Type E- There is no entry fee. The consumer purchases a home and pays monthly fees. If long-term care is ever needed, in-home care is provided when possible. Otherwise, the resident is moved to Assisted Living, Memory Care, Skilled Nursing or Hospice if provided. At this juncture, if the resident desires, they can then sell their unit. The proceeds can be used to defray the cost of advanced care. Residents pay only for services they need personally, as opposed to a sizeable entry-fee required to defray the costs of those who entered suspecting they would be taking advantage of the fixed monthly rate. Because Type E is an equity model contract, residents do not typically 'self-select' (because of failing health). With this type of arrangement, advanced care costs are often lower. Residents utilizing this type of contract have the option to use the on-site advanced care or the freedom to move from the Community.

The Rincon del Rio Contract is Type E- Residents purchase their home at Rincon just as they would any other home. This allows for a mortgage if desired, as well as other estate planning advantages. The Community is managed by a professional management company which is governed by an HOA. This is an important distinction. If management isn't performing to satisfaction, residents can fire them and hire better. Homeowners participate in appreciation when they sell their homes. The result is a community where resident's interests align with those of management. Everyone works together to make the community desirable and well run resulting in higher home values and waiting lists of people hoping to enter.

Further, as an equity model, Rincon del Rio will be regulated by the California Department of Real Estate in addition to regulation by the Department of Social Services which regulates the Advanced Care.

Please see Section III above for more details on the CCRC operations.

Advantages to Nevada County

1. Property Tax in the range of $5-6 million annually. Under the previous map, Rincon del Rio was an Entry Fee Model. Therefore, the property tax would not change as some members vacate and new members enter. Cumulatively Over the years the actuarial impact to Nevada County is substantial. (See Economic Impact section above.)
2. More funding for Combie Fire Department.
3. New employment opportunities for a broad range of talents.
4. Membranes for the Sanitation District.
5. More volunteers and donors for local non-profits.
6. Potential high-tech start-up opportunities. Many of our community members may be active retirees from The Bay Area. They bring connections and ideas with them. Rincon del Rio offers a state-of-the art business center to insure any resident who wants to work has a convenient, fully-equipped place to do that.
7. Less elder migration out of the County. Perhaps new types of jobs will reduce the number of high-functioning young people leaving as well.

8. Better quality of life for Nevada County Seniors. There will be activity that engages not only Rincon del Rio residents, but also seniors throughout the broader community.
9. Reduced fall and replace calls all over the County. As Nevada County residents sell their homes and buy in Rincon, young people will have new places to live. Since we have grouped the older citizens and have EMT's on site, social services are less impacted.
10. Rincon residents will generate sales tax, restaurant revenue, and occupancy taxes from visiting relatives and friends.

Importance to the Health and Well-Being of Nevada County Seniors

Between an ever-shifting investment market and changes to the long-term care insurance industry, residing in a Continuing Care Retirement Community sometimes known as a Life Care Community is one way to responsibly plan for the potential need for long-term care.

Careful planning is important because the annual median cost of an assisted living facility in California for 2018 was $4,500 a month; Memory Care, $8,400 (semi-private) and over $9,800 (private) monthly. Homemaker Services (44 hours weekly) or in-home health services are $4,957 monthly. If night care is needed, add another $1,575.

Rincon del Rio offers a continuum of aging care needs from independent living to assisted living and Memory Care. An important emphasis the CCRC model is to enable residents to avoid having to move, except to another level of care within the community, if their needs change.

In addition to offering facilities for advanced care, Rincon del Rio offers a wide range of activities and amenities including an on-site doctor, a professionally operated farm providing produce to the restaurants and farmer's market, private gardening space, trails and open space, a small downtown with a theater, gymnasium, a state-of-the art business center, and much more.

V. CCRC REGULATIONS – CONTINUING CARE CONTRACT STATUTES

State of California Department of Social Services

Continuing Care Contract Statutes

Health and Safety Code Chapter 10 of Division 2
January 1, 2018

Continuing Care Contracts Section 744 P Street, M.S. 8-16-91

Sacramento, California 95814
(916) 654-0591
www.calccrc.ca.gov

CONTINUING CARE CONTRACT STATUTES

State of California Health
and Safety Code Chapter
10 of Division 2
January 1, 2018

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Article 2. Application

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CONTINUING CARE CONTRACT STATUTES

State of California Health
and Safety Code Chapter
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January 1, 2018

CHAPTER 10. CONTINUING CARE CONTRACTS

Article 1. General Provisions

1770. Legislative Intent.[1]

The Legislature finds, declares, and intends all of the following:

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

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

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

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

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

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

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

1771. Definitions

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

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[1] Chapter and Article titles are original to the statute, but section titles are not part of the original statute text and have been added to this guide for convenience.

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

(2) "Affinity group" means a grouping of entities sharing a common interest, philosophy, or connection (e.g., military officers, religion).

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

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

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

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

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

(b) (reserved)

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

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

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

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

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

(6) "Condition" means a restriction, specific action, or other requirement imposed by the department for the initial or continuing validity of a permit to accept deposits, a provisional certificate of authority, or a certificate of authority. A condition may limit the circumstances under which the provider may enter into any new deposit agreement

or contract, or may be imposed as a condition precedent to the issuance of a permit to accept deposits, a provisional certificate of authority, or a certificate of authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) (reserved)

(h) (reserved)

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

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

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

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

(i) The Federal Home Loan Bank System.

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

(iii) The Federal Financing Bank.

(iv) The Government National Mortgage Association.

(v) The Farmers Home Administration.

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

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

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

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

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

(F) Long-term investment agreements, which have maturity dates in excess of one year, with financial institutions, including, but not limited to, banks and insurance companies or their affiliates, if the financial institution's paying ability for debt obligations or long-term claims or the paying ability of a related guarantor of the financial institution for these obligations or claims, is rated in one of the two highest rating categories of each rating agency rating those instruments, or if the short-term investment agreements are with the financial institution or the related guarantor of the financial institution, the long-term or short-term debt obligations, whichever is applicable, of which are rated in one of the two highest long-term or short-term rating categories, of each rating agency rating the bonds of the financial institution or the related guarantor, provided that if the rating falls below the two highest rating categories, the investment agreement shall allow the provider the option to replace the financial institution or the related guarantor of the financial institution or shall provide

for the investment securities to be fully collateralized by investments described in subparagraph (A), and, provided further, if so collateralized, that the provider has a perfected first security lien on the collateral, as evidenced by an opinion of counsel and the collateral is held by the provider.

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

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

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

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

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

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

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

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

(j) (reserved)

(k) (reserved)

(l) "Life care contract" means a continuing care contract that includes a promise, expressed or implied, by a provider to provide or pay for routine services at all levels of care, including acute care and the services of physicians and surgeons, to the extent not covered by other public or private insurance benefits, to a resident for the duration of his or her life. Care shall be provided under a life care contract in a continuing care retirement community having a comprehensive continuum of care, including a skilled nursing facility, under the ownership and supervision of the provider on or adjacent to the premises. A change shall not be made in the monthly fee based on level of care. A life care contract shall also include provisions to subsidize residents who become financially unable to pay their monthly care fees.

(m)(1) "Monthly care fee" means the fee charged to a resident in a continuing care contract on a monthly or other periodic basis for current accommodations and services,

including care, board, or lodging. Periodic entrance fee payments or other prepayments shall not be monthly care fees.
(2) "Monthly fee contract" means a continuing care contract that requires residents to pay monthly care fees.

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

(o) (reserved)

(p)(1) "Per capita cost" means a continuing care retirement community's operating expenses, excluding depreciation, divided by the average number of residents.

(2) "Periodic charges" means fees paid by a resident on a periodic basis.

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

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

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

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

(7) "Processing fee" means a payment to cover administrative costs of processing the application of a depositor or prospective resident.

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

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

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

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

(q) (reserved)

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

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

(3) "Repayable contract" means a continuing care contract that includes a promise to repay all or a portion of an entrance fee that is conditioned upon reoccupancy or resale of the unit previously occupied by the resident. A repayable contract shall not be considered a refundable contract for purposes of the refund reserve requirements of Section 1792.6, provided that this conditional promise of repayment is not referred to by the applicant or provider as a "refund." A provider may repay all or a portion of an entrance fee that is conditioned upon resale of the unit before the resale of the unit. The repayment of an entrance fee before the resale of the unit shall not cause any other entrance fee to be subject to the refund reserve requirements of Section 1792.6, provided that the provider does not promise, at the time of contracting or thereafter, to make this type of early repayment, represent that the provider intends to make this type of early repayment, or indicate that the provider has a practice of making this type of early repayment.

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

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

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

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

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

(9) "Residential temporary relocation" means the relocation of one or more residents, except in the case of a natural disaster that is out of the provider's control, from one or more residential living units, assisted living units, skilled nursing units, or a wing, floor, or entire continuing care retirement community building, due to a change of use or major repairs or renovations. A residential temporary relocation shall mean a relocation pursuant to this subdivision that lasts for a period of at least 9 months but that does not exceed 18 months without the written agreement of the resident.

(s) (reserved)

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

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

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

1771.2. Permit to Accept Deposits/Certificate of Authority Required.

(a) An entity shall apply for and hold a currently valid permit to accept deposits before it may enter into a deposit agreement or accept a deposit.

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

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

(d) If an entity enters into an agreement to provide care for life or for more than one year to a person under 60 years of age in return for consideration, and the agreement includes the provision of services to that person after age 60, when the person turns 60 years of age, the promising entity shall comply with all the requirements imposed by this chapter.

1771.3. Exemptions: Letters of Exemptions.

(a) This chapter shall not apply to either of the following:

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

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

(b) This chapter shall not apply to any admission or residence agreements offered by residential communities for the elderly or residential care facilities for the elderly that promise residents preferred access to assisted living services or nursing care, when each of the following conditions is satisfied:

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

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

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

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

(5) The admission or residence agreement states:

(A) "This agreement does not guarantee that an assisted living or nursing bed will be available for residents, but, instead, promises preferred access to any assisted living or nursing beds that are available at the community or facility. The promise of preferred access gives residents who have previously occupied a residential living unit a right over other persons to such beds."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1771.4. Market Tests.

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

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

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

(1) All fees shall be deposited in escrow.

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

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

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

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

(e) The entity places all reservation fees collected by the entity into an escrow under the terms of the approved reservation agreement and escrow agreement.

1771.5. License(s) Required.

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

1771.6. Letter of Nonapplicability.

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

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

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

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

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

(4) Copies of all advertising material.

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

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

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

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

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

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

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

1771.7. Resident Rights/Resident Association.

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

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

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

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

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

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

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

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

(6) To manage his or her financial affairs.

(7) To be assured that all donations, contributions, gifts, or purchases of provider-sponsored financial products shall be voluntary, and may not be a condition of acceptance or of ongoing eligibility for services.

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

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

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

(1) Encourage the formation of a resident association by interested residents who may elect a governing body. The provider shall provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to promote a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The association may, among other things, make recommendations to management regarding resident issues that impact the residents' quality of life, quality of care, exercise of rights, safety and quality of the physical environment, concerns about the contract, fiscal matters, or other issues of concern to residents. The

management shall respond, in writing, to a written request or concern of the resident association within 20 working days of receiving the written request or concern.
Meetings shall be open to all residents to attend as well as to present issues. Executive sessions of the governing body shall be attended only by the governing body.

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

(e) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities for the elderly or skilled nursing facilities, the provider shall provide a copy of the bill of rights prescribed by this section to each resident at the time or before the resident signs a continuing care contract, and at any time when the resident is proposed to be moved to a different level of care.

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

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

(h) The department may, upon receiving a complaint of a violation of this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations.

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

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

1771.8. Resident Representatives to Board of Directors.

(a) The Legislature finds and declares all of the following:

(1) The residents of continuing care retirement communities have a unique and valuable perspective on the operations of, and services provided in, the community in which they live.

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

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

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

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

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

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

(c) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or the resident association or its governing body, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the continuing care retirement community and proposed changes in policies, programs, and services. This section does not preclude a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

(d) At least 30 days prior to the implementation of an increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase. This meeting may coincide with the semiannual meetings required in subdivision (c). At least 14 days prior to the meeting to discuss an increase in the monthly care fee, the provider shall make available to each resident or resident household comparative data showing the budget for the upcoming year, the current year's budget, and actual and projected expenses for the current year, and a copy shall be posted in a conspicuous location at each facility.

(e) The governing body of a provider or the designated representative of the provider shall provide residents with at least 14 days' advance notice of each meeting provided for in subdivisions (c) and (d), and shall permit residents attending the meeting to present issues orally and in writing. The governing body of a provider or

the designated representative of the provider shall post the notice of, and the agenda for, the meeting in a conspicuous place in the continuing care retirement community at least 14 days prior to the meeting. The governing body of a provider or the designated representative of the provider shall make available to residents of the continuing care retirement community upon request the agenda and accompanying materials at least seven days prior to the meeting.

(f) A provider shall make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that facility comparing actual costs to budgeted costs broken down by expense category, not less than quarterly, with a written explanation of all significant budget variances, and shall consult with the resident association or its governing body, or, if neither exists, with a committee of residents, during the annual budget planning process. The effectiveness of consultations during the annual budget planning process shall be evaluated at a minimum every two years by the continuing care retirement community administration. The evaluation, including any policies adopted relating to cooperation with residents, shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the provider's governing body provided for in subdivision (c), and a copy of the evaluation shall be posted in a conspicuous location at each facility.

(g) A provider shall, within 10 days after the annual report required pursuant to Section 1790 is submitted to the department, provide, at a central and conspicuous location in the community and in a conspicuous location on the provider's Internet Web site, a copy of the annual report, including the multifacility statement of activities and a copy of the annual audited financial statement, but excluding personal confidential information.

(h) A provider shall maintain, as public information, available upon request to residents, prospective residents, and the public, minutes of the meetings held by the provider's governing body and shall retain these records for at least three years from the date the records were filed or issued.

(i) Except as provided in subdivision (s), the governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state shall accept both of the following:

(1) At least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.

(2) At least one resident, or two residents for a governing body with 21 or more members, of the continuing care retirement community it operates to participate as a voting member of the provider's governing body. A provider's governing body shall not be required to meet the requirements of this paragraph until there is a vacancy on the provider's governing body or upon the next regularly scheduled selection of the provider's governing body occurring on or after January 1, 2015. A resident member shall perform his or her duties in a manner that complies with the standards of conduct and fiduciary duties of all other members of the governing board.

(j) Except as provided in subdivision (s), in a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall do both of the following:

(1) Elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three California- based continuing care retirement communities, or fraction thereof, that the provider operates. If a multifacility organization elects to have one representative for every three communities that the provider operates, the provider shall provide to the president of the residents association of each of the communities that do not have a resident representative the same notice of meetings, packets, minutes, and other materials as the resident representative. At the reasonable discretion of the provider, information related to litigation, personnel, competitive advantage, or confidential information that is not appropriate to disclose, may be withheld.

(2)(A) Elect to have at least one resident, or two residents for a governing body with 21 or more members, from any of the continuing care retirement communities it operates to participate as voting members of the provider's governing body. A provider's governing body shall not be required to meet the requirements of this subparagraph until there is a vacancy on the provider's governing body or upon the next regularly scheduled selection of the provider's governing body occurring on or after January 1, 2015. A resident member shall perform his or her duties in a manner that complies with the standards of conduct and fiduciary duties of all other members of the governing board.

(B) If there are communities that do not have a resident from the community as a voting member of the provider's governing body, the provider shall provide to the president of the resident association of each of those communities the same notice of meetings, packets, minutes, and other materials as the resident voting members. At the reasonable discretion of the provider, information related to litigation, personnel, competitive advantage, or confidential information that is not appropriate to disclose may be withheld.

(k) In order to encourage innovative and alternative models of resident involvement, residents selected pursuant to paragraph (1) of subdivision (i) or paragraph (1) of subdivision (j) to participate as a resident representative to the provider's governing body may, at the option of the resident association, be selected in any one of the following ways:

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

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

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

(l) A resident member of the provider's governing body selected pursuant to paragraph (2) of subdivision (i) or paragraph (2) of subdivision (j) shall be nominated to participate on the provider's governing body by the resident association or, if a resident association does not exist, a committee of residents. The resident association or committee of residents may nominate multiple nominees from which the provider's governing body may approve a resident member. If the governing body disapproves of the resident association's nominations, the resident association or the committee of residents shall nominate additional resident members for the governing body's approval or disapproval until the vacancy is filled.

(m) The resident association, organizing resident, or, in the case of a multifacility organization, the resident-elected committee of residents, shall give residents of the continuing care retirement community at least 30 days' advance notice of the meeting to select a resident representative and resident members of the governing body and shall post the notice in a conspicuous place at the continuing care retirement community.

(n)(1) Except as provided in subdivision (o), resident representatives shall receive the same notice of meetings, packets, minutes, and other materials as members of the provider's governing body and shall be permitted to attend, speak, and participate in all meetings of the governing body.

(2) Resident representatives may share information from meetings with other residents, unless the information is confidential or doing so would violate fiduciary duties to the provider. A resident representative shall be permitted to attend meetings of the governing body committee or committees that review the annual budget of the facility or facilities and recommend increases in monthly care fees. The resident representative shall receive the same notice of meetings, information, packets, minutes, and other materials as committee members, and shall be permitted to attend, speak, and participate in the committee meetings. Resident representatives shall perform their duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(o) Notwithstanding subdivision (n), the provider's governing body may exclude resident representatives from its executive sessions and from receiving meeting materials to be discussed during executive session. However, resident representatives shall be included in executive sessions and shall receive all meeting materials to be discussed during executive sessions related to discussions of the annual budgets, increases in monthly care fees, indebtedness, and expansion of new and existing continuing care retirement communities.

(p) The provider shall pay all reasonable travel costs for resident representatives and resident members of the governing body.

(q) The provider shall disclose in writing the extent of resident involvement with the governing body to prospective residents.

(r) A provider is not prohibited from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings, more

resident representatives or resident members of the governing body to the provider's governing body than required, or by having one or more residents on the provider's governing body who are selected with the active involvement of residents.
(s)(1) If a provider having at least one continuing care retirement community in the state does not have a governing body within the state, the provider shall, in lieu of appointing a voting member pursuant to subdivision (i) or (j), appoint a select committee of its governing body members to meet pursuant to paragraph (6) of subdivision (a) of Section 307 of the Corporations Code, or in a location that has been designated in the notice of the meeting, with the resident association or a resident- elected committee of residents no less frequently than a reasonable period prior to any regularly scheduled meeting of the governing body at each of its facilities in the state to address concerns of the residents and to ensure that the opinions of the residents are relayed to all governing body members of the provider.
(2)(A) For a provider that is a sole proprietorship, general partnership, limited partnership, limited liability company, or a closely held corporation, the provider may, in lieu of appointing a voting member pursuant to paragraph (2) of subdivision (i) or paragraph (2) of subdivision (j), appoint a select committee of its members to, or, if it is a sole proprietorship, the sole proprietor shall, meet in a location that has been designated in the notice of the meeting with the resident association or a resident- elected committee of residents at each of its facilities semiannually and at least 60 days prior to any financial or administrative changes, including, but not limited to, any proposed increase in monthly fees, indebtedness of the provider, expansion or contraction of the community facility, or other changes that would result in a budget variance, or any policies, programs, or services that would materially change the operation or environment of the community, to address concerns of the residents and to ensure that the opinions of the residents are relayed to all members of the provider.
(B) If any member of a limited liability company is a corporation, a nonvoting resident representative elected pursuant to paragraph (1) of subdivision (i) or paragraph (1) of subdivision (j) shall be invited to the meetings of the governing body of that corporation that address any of the proposed changes specified in subparagraph

(A) and shall be permitted to address those proposed changes. The governing body of the corporation shall provide the nonvoting resident representative with at least 30 days' advance notice of the meeting. If more than one member of the limited liability company is a corporation, only the corporation with the largest interest in the limited liability company shall comply with this subparagraph.

1771.10. Comprehensive Disaster Preparedness Plan.

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

1772. Representation or Advertisements Which Lists or Refers to Individual or Organization; Document of Acceptance of Responsibility and Liability; Filing.

(a) No report, circular, public announcement, certificate, financial statement, or any other printed matter or advertising material, or oral representation, that states or implies that an entity sponsors, guarantees, or assures the performance of any continuing care contract, shall be published or presented to any prospective resident unless both of the following have been met:

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

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

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

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

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

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

1772.2. Advertising Disclosures.

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

(b) If the provider has not been issued a certificate of authority, all advertising materials shall specify both of the following:

(1) Whether an application has been filed.

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

1773. Certificate of Authority; Transferability.

(a) A provisional certificate of authority or certificate of authority may not be sold, transferred, or exchanged in any manner. A provider may not sell or transfer ownership of the continuing care retirement community without the approval of the department. Any violation of this section shall cause the applicable provisional certificate of authority or certificate of authority to be forfeited by operation of law pursuant to subdivision (c) of Section 1793.7.

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

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

1774. Non-Applicability of Security Laws.

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

1775. Relationship of Provisions of Chapter to Other Laws and Regulations.

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

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

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

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

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

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

1776. Power of Department to Adopt, Amend, or Repeal Regulations.

The department shall adopt, amend, or repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, reasonable regulations as may be necessary or proper to carry out the purposes and intent of this chapter and to protect the rights of the elderly.

1776.2. Inspections and Examinations.

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

1776.3. Facility Inspections.

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

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

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

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

(2) The provider shall disclose any citation issued by the department pursuant to Section 1793.6 in its disclosure statement to residents as updated annually, and shall post a notice of the citation in a conspicuous location in the facility. The notice shall include a statement indicating that residents may obtain additional information regarding the citation from the provider and the department.

1776.4. Contracting for Consulting Services.

The department may contract with any entity to provide consultation services. In providing the services, the entity shall conform to the requirements of this chapter and

to the rules, regulations, and standards of the department. The department shall reimburse an entity for services performed pursuant to this section.

1776.6. Confidentiality.

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

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

1778. Continuing Care Provider Fee Fund.

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

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

(1) Program personnel salary costs, to include but not be limited to: Continuing Care Contracts Program Manager at a level consistent with other management classifications that direct a regulatory program with statewide impact requiring skills and knowledge at the highest level with responsibility for work of the most critical or sensitive nature as it relates to the department's mission, including protecting vulnerable elderly persons, supervising technical staff with oversight of highly complex operations and responsibility for policy and program evaluation and recommendations; full-time legal counsel with a working knowledge of all laws relating to the regulation of continuing care retirement communities and residential care facilities for the elderly; financial analyst with working knowledge of generally accepted accounting principles and auditing standards; and other appropriate analytical and technical support positions.

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

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

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

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

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

Article 2. Application

1779. Application Required.

(a) An entity shall file an application for a permit to accept deposits and for a certificate of authority with the department, as set forth in this chapter, before doing any of the following:

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

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

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

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

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

(6) Recommencing marketing on a planned continuing care retirement community when the applicant has previously forfeited a permit to accept deposits pursuant to Section 1703.7.[2]

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

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

(b) For purposes of paragraph (4) of subdivision (a), an expansion of a continuing care retirement community shall be deemed to occur when there is an increase in the capacity stated on the residential care facility for the elderly license issued to the continuing care retirement community, an increase in the number of units at the continuing care retirement community, an increase in the number of skilled nursing beds, or additions to or replacement of existing continuing care retirement community structures that may affect obligations to current residents.

(c) Any provider that alters, or proposes to alter, its organization, including by means of a change in the type of entity it is, separation from another entity, merger, affiliation, spinoff, or sale, shall file a new application and obtain a new certificate of authority before the new entity may enter into any new continuing care contracts.

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

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[2] Note that section 1793.7 relates to the forfeiture of permits to accept deposits, PCOA, or COA.

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

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

1779.2. Application; Fees.

(a) Any entity filing an application for a permit to accept deposits and a certificate of authority shall pay an application fee.

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

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

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

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

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

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

1779.4. Application Contents.

An application shall contain all of the following:

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

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

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

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

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

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

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

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

(i) A license to operate the proposed skilled nursing facility or evidence that an application has been filed with the Licensing and Certification Division of the State Department of Health Services, if applicable.

(j) A statement disclosing any revocation or other disciplinary action taken, or in the process of being taken, against a license, permit, or certificate held or previously held by the applicant.

(k) A description of any matter in which any interested party involved with the proposed continuing care retirement community has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or the misappropriation of property. For the purpose of this subdivision, "interested party" includes any representative of the developer of the proposed continuing care retirement community or the applicant, including all general partners, executive officers, or chief operating officers and board members of corporations; and managing members and managers of limited liability companies for

each entity; who has significant decisionmaking authority with respect to the proposed continuing care retirement community.

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

(1) A statement identifying the type of legal entity and listing the interest and extent of the interest of each principal in the legal entity. For the purposes of this paragraph, "principal" means any person or entity having a financial interest in the legal entity of 10 percent or more. When the application is submitted in the name of a corporation, the parent, sole corporate shareholder, or sole corporate member who controls the operation of the continuing care retirement community shall be listed as an applicant. When multiple corporate applicants exist, they shall be listed jointly by corporate name on the application, and the certificate of authority shall be issued in the joint names of the corporations. When the application is submitted by a partnership, all general partners shall be named as coapplicants and the department shall name them as coproviders on any certificate of authority it issues.

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

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

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

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

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

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

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

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

(p) A copy of any proposed reservation agreement.

(q) A copy of the proposed deposit agreements.

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

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

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

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

(v) A statement of the actions that have been, or will be, taken by the applicant to fund reserves as required by Section 1792 or 1792.6 and to otherwise ensure that the applicant will have adequate finances to fully perform continuing care contract obligations. The statement shall describe actions such as establishing restricted accounts, sinking funds, trust accounts, or additional reserves. If the applicant is purchasing an existing continuing care retirement community from a selling provider, the applicant shall provide an actuarial report to determine the liabilities of existing continuing care contracts and demonstrate the applicant's ability to fund those obligations.

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

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

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

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

(2) The construction plans, construction financing, and permanent financing for the proposed continuing care retirement community, including a description of the anticipated source, cost, terms, and use of all funds to be used in the land acquisition,

construction, and operation of the continuing care retirement community. This proposal shall include, at a minimum, all of the following:

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

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

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

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

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

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

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

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

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

(B) A forecast of the market penetration the continuing care retirement community will achieve based on the proposed fee structure.

(C) Existing and planned competition in and about the primary service area.

(4) A detailed description of the sales and marketing plan, including all of the following:

(A) Marketing projections, anticipated sales, and cancellation rates.

(B) Month-by-month forecast of unit sales through sellout.

(C) A description of the marketing methods, staffing, and advertising media to be used by the applicant.

(D) An estimate of the total entrance fees to be received from residents prior to opening the continuing care retirement community.

(5) Projected move-in rates, deposit collections, and resident profiles, including couple mix by unit type, age distribution, care and nursing unit utilization, and unit turnover or resale rates.

(6) A description or analysis of development-period costs and revenues throughout the development of the proposed continuing care retirement community.

(z) Projected annual financial statements for the period commencing on the first day of the applicant's current fiscal year through at least the fifth year of operation.

(1) Projected annual financial statements shall be prepared on an accrual basis using the same accounting principles and procedures as the audited financial statements furnished pursuant to subdivision (x).

(2) Separate projected annual cash-flow statements shall be provided. These statements shall show projected annual cash-flows for the duration of any debt associated with the continuing care retirement community. If the continuing care retirement community property is leased, the cash-flow statement shall demonstrate the feasibility of closing the continuing care retirement community at the end of the lease period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"NOTICE OF STATUTORY LIMITATION ON TRANSFER

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

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

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

(4) Unless a Notice of Statutory Limitation on Transfer has been recorded with respect to the land on which the applicant or provider is operating, or intends to operate a continuing care retirement community, prior to the date of execution of any trust deed, mortgage, or any other lien or encumbrance securing or evidencing the payment of money and affecting land on which the applicant or provider intends to

operate a continuing care retirement community, the applicant or provider shall give the department advance written notice of the proposed encumbrance. Upon the giving of notice to the department, the applicant or provider shall execute and record the Notice of Statutory Limitation on Transfer in the office of the county recorder in each county in which any portion of the continuing care retirement community is located prior to encumbering the continuing care retirement community property with the proposed encumbrance.

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

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

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

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

1779.6. Timeframes; Approval or Denial of Applications.

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

(b) Within 30 calendar days following its receipt of an application, the department shall determine if the application is complete and inform the applicant of its determination. If the department determines that the application is incomplete, its notice to the applicant shall identify the additional forms, documents, information, and other materials required to complete the application. The department shall allow the applicant adequate time to submit the requested information and materials. This review may not determine the adequacy of the materials included in the application.

(c) Within 120 calendar days after the department determines that an application is complete, the department shall review the application for adequacy. An application shall be adequate if it complies with all the requirements imposed by this chapter, and both the financial study and marketing study reasonably project the feasibility of the proposed continuing care retirement community, as well as demonstrate the financial

soundness of the applicant. The department shall either approve the application as adequate under this chapter or notify the applicant that its application is inadequate. If the application is inadequate, the department shall identify the deficiencies in the application, provide the appropriate code references, and give the applicant an opportunity to respond.

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

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

1779.7. Third Party Transferors.

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

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

1779.8. Changes in Application Information.

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

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

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

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

(2) Whether an additional application fee is required.

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

(d) The department shall suspend the applicant's application and, if applicable, its permit to accept deposits if the applicant fails to give written notice of changes required by this section. The suspension shall remain in effect until the department has both assessed the potential impact of the changes on the interests of depositors and taken such action as necessary under this chapter to protect these interests.

1779.10. Denial of an Application.

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

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

(2) Submit all information required by this chapter.

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

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

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

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

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

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

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

(1) A statement that the application is denied.

(2) The grounds for the denial.

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

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

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

Article 3. Deposit Period

1780. Issuance of Permit to Accept Deposits.

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

(a) Determined that the application is adequate.

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

(c) Reviewed and approved the deposit agreements.

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

1780.2. Deposit Payment Process; Processing Fees.

(a) A deposit may be paid in one or several payments, at or after the time the parties enter into the deposit agreement. A deposit shall be paid by cash or cash equivalent, jointly payable to the applicant and the escrow agent or depository. Possession and control of any deposit agreement shall be transferred to the escrow agent at the time the deposit is paid.

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

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

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

(c) Payments made by a depositor for upgrades or modifications to the living unit shall not be placed in escrow with deposits. The applicant shall provide written refund policies to the depositor before accepting any payments for modifications or upgrades.

(d) The applicant shall furnish to the department within the first 10 days of each calendar month a list of all residents who have made payments for modifications or upgrades, the amounts each resident has paid, the date of each payment, and the unit to be modified or upgraded for each resident.

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

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

1780.4. Agreements Between Applicant and Depositor; Contents; Approval of Forms; Size of Print.

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

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

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

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

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

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

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

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

(4) Processing fee terms and conditions, including:

(A) The amount.

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

(C) Notice that the processing fee shall be refunded within 30 days if the applicant does not accept the depositor for residency, or the applicant fails to construct the continuing care retirement community before the estimated date of completion and the department determines that there is no satisfactory cause for the delay.

(5) Requirements for payment of the deposit by the depositor.

(6) A statement informing the depositor that their deposit payments will be converted to an entrance fee payment at the time the continuing care contract is executed.

(7) A statement informing the depositor that deposits shall be refunded within 30 calendar days of the depositor's nonacceptance for residency or notice to the applicant of the death of the depositor.

(8) A statement informing the depositor that all deposits shall be refunded to the depositors if the continuing care retirement community is not constructed by the estimated date of completion and the department determines that there is no satisfactory cause for the delay.

(9) A statement informing the depositor that a refund of the deposit within 10 calendar days of notice of cancellation by the depositor. The deposit agreement shall state that depositors who have deposited more than one thousand dollars ($1,000) or 5 percent of the entrance fee, whichever is greater, and who have been notified that construction of the proposed continuing care retirement community has commenced, will not be entitled to a refund of their deposit until the provisional certificate of authority is issued or after one of the following occurs:

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

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

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

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

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

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

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

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

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

(4) A statement that any amount by which the face value of the deposited instruments exceeds the required deposit shall be deemed part of the deposit and shall be applied against the depositor's obligations under the deposit agreement.

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

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

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

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

(h) A statement that no funds deposited in a deposit escrow account shall be subject to any liens, judgments, garnishments, or creditor's claims against the applicant, the proposed continuing care retirement community property, or the continuing care

retirement community. The deposit agreement shall also provide that deposits may not be subject to any liens or charges by the escrow agent, except that cash equivalent deposits may be subject to transactions fees, commissions, prepayment penalties, and other fees incurred in connection with these deposits.

(i) A schedule of projected monthly care fees estimated to be charged to residents for each of the first five years of the continuing care retirement community's existence shall be attached to each deposit agreement. This schedule shall contain a conspicuous statement in at least 10-point boldface type that the projected fees are an estimate only and may be changed without notice.

1781. Deposit Escrow Account Required.

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

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

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

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

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

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

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

(d) All deposits shall remain in escrow until the department has authorized release of the deposits, as provided in Section 1783.3.

(e) Deposits shall be invested in instruments guaranteed by the federal government or an agency of the federal government, or in investment funds secured by federally guaranteed instruments.

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

1781.2. Deposits to the Escrow Agent.

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

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

1781.4. Deposit Escrow Agreement Requirements.

The deposit escrow account agreement between the applicant and the escrow agent shall include all of the following:

(a) The amount of the processing fee.

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

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

(1) The name and address of each depositor or resident.

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

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

(4) The total deposit required for the unit.

(5) The total entrance fee for the unit.

(6) Ten percent of the total entrance fee.

(7) Each deposit payment made by or on behalf of the depositor and any refunds paid to the depositor.

(8) The unpaid balance for each depositor's deposit.

(9) The unpaid balance for each depositor's entrance fee.

(10) The current balance in the deposit escrow account for each depositor and the collective balance.

(11) The dollar amount, type, and maturity date of any cash equivalent paid by each depositor.

(d) A provision for investment of escrow account funds in a manner consistent with Section 1781.

(e) A provision for refunds to depositors in the manner specified by Section 1783.2.

(f) A provision regarding the payment of interest earned on the funds held in escrow in the manner specified in the applicant's deposit agreement.

(g) Release of deposit escrow account funds in the manner specified in Section 1783.3, including to whom payment of interest earned on the funds will be made.

(h) Representations by the escrow agent that it is not, and shall not be during the term of the deposit escrow account, a lender to the applicant or for the proposed continuing care retirement community, or a fiduciary for any lender or bondholder for that continuing care retirement community, unless approved by the department.

(i) If cash equivalents may be accepted as a deposit in lieu of cash, the deposit escrow account agreement shall also include all of the following:

(1) Authorization for the escrow agent to convert instruments to cash when they mature. The escrow agent may notify all financial institutions whose securities are held by the escrow agent that all interest and other payments due upon these instruments shall be paid to the escrow agent. The escrow agent shall collect, hold, invest, and disburse these funds as provided under the escrow agreement.

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

(A) The depositor's written request to receive monthly payments of interest accrued on his or her deposits.

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

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

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

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

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

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

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

1781.6. Changes to Deposit Agreement or Deposit Escrow Account Agreement Forms.

All changes to a deposit agreement or deposit escrow account agreement form shall be submitted to, and approved by, the department before use by the applicant.

1781.8. Earnings from Funds in Escrow.

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

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

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

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

1781.10. Escrowed Funds Not to be Used as Collateral.

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

1782. Construction.

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

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

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

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

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

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

1783. Conversion of Existing Building to Continuing Care.

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

(2) If the proposed continuing care retirement community is already occupied and only a portion of the existing residential units will be converted into continuing care

units, the department may modify the presale requirements of paragraph (3) of subdivision (a) of Section 1782 and paragraph (2) of subdivision (a) of Section 1783.3.
(b) Any applicant proposing to convert an existing building into continuing care units shall indicate the portion of the facility to be used for continuing care contract services. The continuing care allocation specified by the applicant shall be reflected in all financial and marketing studies and shall be used to determine the applicant's compliance with the percentage requirements stated in paragraph (3) of subdivision (a) of Section 1782 and paragraph (2) of subdivision (a) of Section 1783.3.

1783.2. Refunds of Deposits.

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

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

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

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

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

1783.3. Release of Escrowed Funds.

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

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

(2) At least 10 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 60 percent of the total number of residential living units. Any unit for which a refund is pending may not be counted toward that 60- percent requirement.

(3) Deposits made with cash equivalents have been either converted into, or substituted with, cash or held for transfer to the provider. A cash equivalent deposit may be held for transfer to the provider, if all of the following conditions exist:

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

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

(C) The depositor is credited the amount equal to the value of the cash equivalent.

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

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

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

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

(2) The department has determined that there has been substantial compliance with projected annual financial statements that served as a basis for issuance of the permit to accept deposits.

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

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

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

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

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

1784. Expiration of a Permit to Accept Deposits.

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

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

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

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

(c) Within 10 calendar days the applicant shall notify each depositor of the department's approval or denial of the extension, of any expiration of the permit to accept deposits and of any right to a refund of their deposits.

1785. Failure to Meet Projections of Financial and Marketing Plan.

(a) If, at any time prior to issuance of a certificate of authority, the applicant's average performance over any six-month period does not substantially equal or exceed the applicant's projections for that period, the department may take any of the following actions:

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

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

(3) Increase the reserve requirements under this chapter.

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

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

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

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

Article 4. Certificate of Authority

1786. Provisional Certificate of Authority.

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

(1) Complied with the approved marketing plans.

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

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

(4) Obtained the required licenses.

(5) Paid the remainder of the application fee.

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

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

(8) Met all applicable provisions of this chapter.

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

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

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

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

(d) After the provisional certificate of authority is issued providers may continue to take deposits by modifying the deposit agreement as appropriate. The new deposit agreement shall clearly state the rights of the depositor and the provider. The applicant shall submit the agreements to the department for review and approval prior to use. A provider that holds a provisional certificate of authority or certificate of authority may accept fees paid by potential residents to be placed on a waiting list without using a deposit agreement. These waiting list fees may not exceed five hundred dollars ($500), and shall be refunded to the potential resident upon written request.

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

1786.2. Certificate of Authority.

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

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

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

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

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

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

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

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

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

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

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

Article 5. Contract

1787. Agreements Between Provider and Transferor; Contents; Forms; Filing and Approval; Size of Print.

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

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

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

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

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

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

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

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

(i) The continuing care contract shall be an admissions agreement for purposes of the residential care facility for the elderly and long-term health care facility requirements and shall state the resident's entitlement to receive these levels of care. The continuing care contract may state the entitlement for skilled nursing care in accordance with the provisions of law governing admissions to long-term health care facilities in effect at the time of admission to the skilled nursing facility. The parties may agree to the terms of nursing facility admission at the time the continuing care contract is executed, or the provider may present an exemplar of the then-current nursing facility admission agreement and require the resident to execute the form of agreement in effect at the time of admission to the nursing facility. The terms shall include the nursing fee, or the method of determining the fee, at the time of the execution of the continuing care contract, the services included in and excluded from the fee, the grounds for transfers and discharges, and any other terms required to be included under applicable law.

(j) Only the skilled nursing admission agreement sections of continuing care contracts which cover long-term health care facility services are subject to Chapter 3.95 (commencing with Section 1599.60). The provider shall use a skilled nursing admission nursing agreement that complies with the requirements of Chapter 3.95 (commencing with Section 1599.85).

1788. Provisions of Contract.

(a) A continuing care contract shall contain all of the following:

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

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

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

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

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

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

(7) The duration of the continuing care contract.

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

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

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

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

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

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

(F) Assisted living services.

(G) Assistance with taking medications.

(H) Central storing and distribution of medications.

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

(9) An itemization of the services that are included in the monthly fee and the services that are available at an extra charge. The provider shall attach a current fee schedule to the continuing care contract. The schedule shall state that a provider is prohibited from charging the resident or his or her estate a monthly fee once a unit has

been permanently vacated by the resident, unless the fee is part of an equity interest contract.

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

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

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

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

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

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

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

(i) Involve the resident and the resident's responsible person, as defined in paragraph (6) of subdivision (r) of Section 87101 of Title 22 of the California Code of Regulations, and upon the resident's or responsible person's request, family members, or the resident's physician or other appropriate health professional, in the assessment process that forms the basis for the level of care transfer decision by the provider. The provider shall offer an explanation of the assessment process, which shall include, but not be limited to, an evaluation of the physical and cognitive capacities of the resident. An assessment tool or tools, including scoring and evaluating criteria, shall be used in the determination of the appropriateness of the transfer. The provider shall make copies of the completed assessment to share with the resident or the resident's responsible person.

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

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

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

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

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

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

(viii) For disputed transfer decisions, the provider shall provide documentation of the resident’s medical reports, other documents showing the resident’s current mental and physical function, the prognosis, and the expected duration of relevant conditions, if applicable. The documentation shall include an explanation of how the criteria set out in subparagraph (A) are met. The provider shall make copies of the completed report to share with the resident’s responsible person.

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

(D) For disputed transfer decisions, the resident or the resident's responsible person has the right to a prompt and timely review of the transfer process by the Continuing Care Contracts Branch of the State Department of Social Services. The branch of the department shall provide a description of the steps a provider took and the factors a provider considered in deciding to transfer a resident, including the assessment tool or tools and the scoring and evaluating criteria used by the provider to justify the transfer.

(E) The decision of the department's Continuing Care Contracts Branch shall be in writing and shall determine whether the provider failed to comply with the transfer process pursuant to subparagraphs (A) to (C), inclusive, and whether the transfer is appropriate and necessary. Pending the decision of the Continuing Care Contracts Branch, the provider shall specify any additional care the provider believes is

necessary in order for the resident to remain in his or her unit. The resident may be required to pay for the extra care, as provided in the contract.

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

(11) Provisions describing any changes in the resident's monthly fee and any changes in the entrance fee refund payable to the resident that will occur if the resident transfers from any unit, including, but not limited to, terminating his or her contract after 18 months of residential temporary relocation, as defined in paragraph (8) of subdivision (r) of Section 1771. Unless the fee is part of an equity interest contract, a provider is prohibited from charging the resident or his or her estate a monthly fee once a unit has been permanently vacated by the resident.

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

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

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

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

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

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

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

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

(17) The amount of the entrance fee.

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

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(26) Notice that the living units are part of a continuing care retirement community that is licensed as a residential care facility for the elderly and, as a result, anyduly

authorized agent of the department may, upon proper identification and upon stating the purpose of his or her visit, enter and inspect the entire premises at any time, without advance notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) State the provider shall make a good-faith effort to reoccupy or resell a unit for which a lump-sum payment is conditioned upon resale of the unit. No later than July 1, 2017, a provider shall provide notice to all current residents with contracts applicable to this subparagraph regarding the statement required by this subparagraph as a clarification of the resident's existing contract.

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

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

"NOTICE" (date)

This is a continuing care contract as defined by paragraph (8) of subdivision (c), or subdivision (l) of Section 1771 of the California Health and Safety Code. This continuing care contract form has been approved by the State Department of Social Services as required by subdivision (b) of Section 1787 of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has submitted a contract that complies with the minimum statutory requirements applicable to continuing care contracts. The department does not approve or disapprove any of the financial or health care coverage provisions in this contract.

Approval by the department is NOT a guaranty of performance or an endorsement of any continuing care contract provisions. Prospective transferors and residents are strongly encouraged to carefully consider the benefits and risks of this continuing care contract and to seek financial and legal advice before signing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In these cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed

in the continuing care contract or in a medical report attached to and made a part of the continuing care contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"NOTICE OF CANCELLATION" (date)

Your first date of occupancy under this contract is:

_____

"You may cancel this transaction, without any penalty within 90 calendar days from the above date. If you cancel, any property transferred, any payments made by you under the contract, and any negotiable instrument executed by you will be returned within
14 calendar days after making possession of the living unit available to the provider. Any security interest arising out of the transaction will be canceled.
If you cancel, you are obligated to pay a reasonable processing fee to cover costs and to pay for the reasonable value of the services received by you from the provider up to the date you canceled or made available to the provider the possession of any living unit delivered to you under this contract, whichever is later.
If you cancel, you must return possession of any living unit delivered to you under this contract to the provider in substantially the same condition as when you took possession.
Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain liable for performance of all obligations under the contract.
To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to_____
(Name of provider)

at_____
(Address of provider's place of business)

not later than midnight of_____ (date).

I hereby cancel this transaction _____
(Resident's or Transferor's signature)"

1788.2. Cancellation.

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

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

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

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

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

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

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

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

(e) No resale fee shall exceed the sum of 10 percent of either the original or resale price of the equity interest and 100 percent of the excess if any, of the gross resale price of the equity interest over the purchase price paid by the resident or on behalf of the resident for the interest if either of the following applies:

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

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

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

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

1788.4. Refunds.

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

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

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

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

(e) A lump-sum payment after termination of a repayable contract, as defined in paragraph (3) of subdivision (r) of Section 1771, shall not be considered to be a refund and may not be characterized or advertised as a refund. The full lump sum owed, including any interest accrued, shall be paid to the resident or the resident’s estate within 14 calendar days after resale of the unit.

(f)(1) Any balance of the lump sum owed that has not been paid to the resident or the resident’s estate within 180 days after termination of a repayable contract shall accrue interest at a rate calculated pursuant to paragraph (2). Any balance of the lump sum owed that has not been paid to the resident or the resident’s estate within 240 days after termination of a repayable contract shall accrue interest at a rate calculated pursuant to paragraph (3). Interest shall continue to accrue annually pursuant to paragraph (4) until the date the full lump sum owed is paid to the resident or the resident’s estate. This subdivision shall apply only to repayable contracts entered into on or after January 1, 2017.

(2) Any amount owed that is not paid to the resident or the resident's estate within the 180-day period pursuant to paragraph (1) shall accrue simple interest at a rate of 4 percent of the amount owed.

(3) Any amount owed that is not paid to the resident or the resident's estate within the 240-day period pursuant to paragraph (1) shall accrue simple interest at a rate of 6 percent of the amount owed.

(4) Any amount owed that is not paid to the resident or the resident's estate within one year after the 240-day period pursuant to paragraph (3) shall accrue interest at a rate of 6 percent, compounded annually.

(5) Until January 1, 2018, this subdivision shall not apply to a project that is in development prior to January 1, 2017, including current repayable agreements, current deposit agreements that contemplate repayable entrance fees, and other projects that have received department approval to market units pursuant to Section 1771.4, or have received issuer, lender, or bond insurer approval to obtain bond financing, or other governmental approval based on a repayable entrance fee option, if the initial contract for the project is entered into on or before January 1, 2018.

(g) Except as otherwise obligated by an equity interest contract, once the unit has been vacated and made available to the provider, the provider shall not make any further charges to the resident or his or her estate or charges against the lump sum owed to the resident or the resident's estate for purposes of continued monthly payments to the provider or for maintenance or housekeeping on the vacated unit.

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

Article 6. Reporting and Reserve Requirements.

1789. Notice of Proposed Changes.

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

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

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

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

1789.1. Disclosure Statements.

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

(b) The department shall issue a disclosure statement form that shall generally require disclosure, at a minimum, of the following information:

(1) General information regarding the provider and the continuing care retirement community, including at a minimum all of the following:

(A) The continuing care retirement community's name, address, and telephone number.

(B) The type of ownership, names of the continuing care retirement community's owner and operator, the names of any affiliated facilities, and any direct religious affiliation.

(C) Whether accredited and by what organization.

(D) The year the continuing care retirement community opened and the distance to the nearest shopping center and hospital.

(E) Whether the continuing care retirement community offers life care contracts or continuing care contracts, and whether the continuing care retirement community is single story or multistory.

(F) The number of the continuing care retirement community's studio units, one bedroom units, two bedroom units, cottages or houses, assisted living beds, and skilled nursing beds.

(G) The continuing care retirement community's percentage occupancy at the provider's most recent fiscal yearend.

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

(I) Any age and insurance requirements for admission.

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

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

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

(A) Operating income (excluding amortization of entrance fee income).

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

(C) Net income from operations.

(D) Interest expense.

(E) Unrestricted contributions.

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

(G) Net income or loss before entrance fees.

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

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

(4) Financial ratios for each of the three most recent years for which audited financial statements have been prepared, including all of the following: debt-to-asset ratio, operating ratio, debt service coverage ratio, and days cash-on-hand. The formulas for each ratio shall be determined by the department after consultation with the Continuing Care Advisory Committee.

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

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

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

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

1789.2. Increases to Encumbrances on Property or Revenues.

(a) A provider shall provide the department with written notice at least 90 calendar days prior to closing any transaction that results in an encumbrance or lien on a continuing care retirement community property or its revenues.

(b) The written notice required by this section shall include all of the following:

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

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

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

(4) An analysis of the impact that the proposed encumbrance would have on assets available for liquid reserves required by Section 1792, and refund reserves required by Section 1792.6.

(c) Within seven calendar days of receipt of notice of proposed changes, the department shall acknowledge receipt of the notice in writing.

(d) Within 30 calendar days following its receipt of the notice, the department shall inform the provider in writing whether additional materials are required to evaluate the transaction.

(e) Within 90 calendar days following its receipt of additional materials, the department shall inform the provider of its approval or denial of the proposed transaction.

(f) Providers shall not execute the proposed financial transaction for which notice has been given pursuant to subdivision (a) without the department's written authorization unless either the 30-day response period or the 90 calendar day period for the department's review of the provider's request has expired without any response by the department.

(g) If the department determines that the proposed financial transaction will materially increase monthly care fees or impair the provider's ability to maintain required reserves, the department may:

(1) Refuse to approve the transaction.

(2) Record a notice of lien on the provider's property pursuant to Section 1793.15 after notifying the provider and giving the provider an opportunity to withdraw the planned transaction.

(3) Take both actions and any other action that it determines is necessary to protect the best interests of the residents.

(h) Within 10 calendar days of submitting notification to the department of any proposed encumbrance to the community property, the provider shall notify the resident governing body or association of the proposed encumbrance in the manner required by subdivision (e) of Section 1779.

1789.4. Sale or Transfer of Continuing Care Retirement Community.

(a) A provider for a continuing care retirement community shall obtain approval from the department before consummating any sale or transfer of the continuing care retirement community or any interest in that community, other than sale of an equity interest in a unit to a resident or other transferor.

(b) The provider shall provide written notice to the department at least 120 calendar days prior to consummating the proposed transaction.

(c) The notice required by this section shall include all of the following:

(1) The identity of the purchaser.

(2) A description of the terms of the transfer or sale, including the sales price.

(3) A plan for ensuring performance of the existing continuing care contract obligations.

(d) The provider shall give written notice to all continuing care contract residents and depositors 120 calendar days prior to the sale or transfer. The notice shall do all of the following:

(1) Describe the parties.

(2) Describe the proposed sale or transfer.

(3) Describe the arrangements for fulfilling continuing care contract obligations.

(4) Describe options available to any depositor or resident who does not wish to have his or her contract assumed by a new provider.

(5) Include an acknowledgment of receipt of the notice to be signed by the resident.

(e) Unless a new provider assumes all of the continuing care obligations of the selling provider at the close of the sale or transfer, the selling provider shall set up a trust fund or secure a performance bond to ensure the fulfillment of all its continuing care contract obligations.

(f) The purchaser shall make applications for, and obtain, the appropriate licenses and a certificate of authority before executing any continuing care contracts or assuming the selling provider's continuing care contract obligations.

1789.6. Notice of Statutory Limitation on Transfer.

A provider shall record with the county recorder a "Notice of Statutory Limitation on Transfer" for each community as required by subdivision (aa) of Section 1779.4 and Section 1786.

1789.8. Fidelity Bonds for Employees.

Each provider shall obtain and maintain in effect insurance or a fidelity bond for each agent or employee, who, in the course of his or her agency or employment, has access to any substantial amount of funds. This requirement is separate from the bonding requirements of residential care facility for the elderly regulations.

1790. Annual Reports.

(a) Each provider that has obtained a provisional or final certificate of authority and each provider that possesses an inactive certificate of authority shall submit an annual report of its financial condition. The report shall consist of audited financial statements and required reserve calculations, with accompanying certified public accountants' opinions thereon, the reserve information required by paragraph (2), Continuing Care Provider Fee and Calculation Sheet, evidence of fidelity bond as required by Section 1789.8, and certification that the continuing care contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information:

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

(2) Full details on the status, description, and amount of all reserves that the provider currently designates and maintains, and on per capita costs of operation for each continuing care retirement community operated.

(3) Disclosure of any amounts accumulated or expended for identified projects or purposes, including, but not limited to, projects designated to meet the needs of the continuing care retirement community as permitted by a provider's nonprofit status under Section 501(c)(3) of the Internal Revenue Code, and amounts maintained for contingencies. The disclosure of a nonprofit provider shall state how the project or purpose is consistent with the provider's tax-exempt status. The disclosure of a for- profit provider shall identify amounts accumulated for specific projects or purposes and amounts maintained for contingencies. Nothing in this subdivision shall be construed to require the accumulation of funds or funding of contingencies, nor shall it be interpreted to alter existing law regarding the reserves that are required to be maintained.

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

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

(6) Any other information as the department may require.

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

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

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

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

(f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations. The request shall be made each year within 30 days after the provider's fiscal yearend. The request shall include the amount of the trust fund or performance bond determined by calculating the projected life costs, less the projected life revenue, for the remaining continuing care residents in the year the provider requests the

waiver. If the department approves the request, the following shall be submitted to the department annually:

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

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

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

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

1791. Annual Provider Fees.

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

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

(c) If a provider is granted an exemption from filing annual reports to the department pursuant to subdivision (f) of Section 1790, the minimum annual provider fee shall be two hundred fifty dollars ($250). This fee shall be submitted after the end of the provider's fiscal year with proof of trust fund or performance bond as required by subdivision (f) of Section 1790.

1792. Liquid Reserve Requirement; Amount.

(a) A provider shall maintain at all times qualifying assets as a liquid reserve in an amount that equals or exceeds the sum of the following:

(1) The amount the provider is required to hold as a debt service reserve under Section 1792.3.

(2) The amount the provider must hold as an operating expense reserve under Section 1792.4.

(b) The liquid reserve requirement described in this section is satisfied when a provider holds qualifying assets in the amount required. Except as may be required under subdivision (d), a provider is not required to set aside, deposit into an escrow, or otherwise restrict the assets it holds as its liquid reserve.

(c) A provider shall not allow the amount it holds as its liquid reserve to fall below the amount required by this section. In the event the amount of a provider's liquid

reserve is insufficient, the provider shall prudently eliminate the deficiency by increasing its assets qualifying under Section 1792.2.

(d) The department may increase the amount a provider is required to hold as its liquid reserve or require that a provider immediately place its liquid reserve into an escrow account meeting the requirements of Section 1781 if the department has reason to believe the provider is any of the following:

(1) Insolvent.

(2) In imminent danger of becoming insolvent.

(3) In a financially unsound or unsafe condition.

(4) In a condition such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts.

(e) For providers that have voluntarily and permanently discontinued entering into continuing care contracts, the department may allow a reduced liquid reserve amount if the department finds that the reduction is consistent with the financial protections imposed by this article. The reduced liquid reserve amount shall be based upon the percentage of residents at the continuing care retirement community who have continuing care contracts.

1792.2. Qualifying Assets.

(a) A provider shall satisfy its liquid reserve obligation with qualifying assets. Qualifying assets are:

(1) Cash.

(2) Cash equivalents as defined in paragraph (4) of subdivision (c) of Section 1771.

(3) Investment securities, as defined in paragraph (2) of subdivision (i) of Section 1771.

(4) Equity securities, including mutual funds, as defined in paragraph (7) of subdivision (e) of Section 1771.

(5) Lines of credit and letters of credit that meet the requirements of this paragraph. The line of credit or letter of credit shall be issued by a state or federally chartered financial institution approved by the department or whose long-term debt is rated in the top three long-term debt rating categories by either Moody's Investors Service, Standard and Poor's Corporation, or a recognized securities rating agency acceptable to the department. The line of credit or letter of credit shall obligate the financial institution to furnish credit to the provider.

(A) The terms of the line of credit or letter of credit shall at a minimum provide both of the following:

(i) The department's approval shall be obtained by the provider and communicated in writing to the financial institution before any modification.

(ii) The financial institution shall fund the line of credit or letter of credit and pay the proceeds to the provider no later than four business days following written instructions from the department that, in the sole judgment of the department, funding of the provider's minimum liquid reserve is required.

(B) The provider shall provide written notice to the department at least 14 days before the expiration of the line of credit or letter of credit if the term has not been extended or renewed by that time. The notice shall describe the qualifying assets the provider will use to satisfy the liquid reserve requirement when the line of credit or letter of credit expires.

(C) A provider may satisfy all or a portion of its liquid reserve requirement with the available and unused portion of a qualifying line of credit or letter of credit.

(6) For purposes of satisfying all or a portion of a provider's debt service reserve requirement described in Section 1792.3, restricted assets that are segregated or held in a separate account or escrow as a debt service reserve under the terms of the provider's long-term debt instruments are qualifying assets, subject to all of the following conditions:

(A) The assets are restricted by the debt instrument so that they may be used only to pay principal, interest, and credit enhancement premiums.

(B) The provider furnishes to the department a copy of the agreement under which the restricted assets are held and certifies that it is a correct and complete copy. The provider, escrow holder, or other entity holding the assets must agree to provide to the department any information the department may request concerning the debt service reserve it holds.

(C) The market value, or guaranteed value, if applicable, of the restricted assets, up to the amount the provider must hold as a debt reserve under Section 1792.3, will be included as part of the provider's liquid reserve.

(D) The restricted assets described in this paragraph will not reduce or count towards the amount the provider must hold in its liquid reserve for operating expenses.

(7) For purposes of satisfying all or a portion of a provider's operating expense reserve requirement described in Section 1792.4, restricted assets that are segregated or held in a separate account or escrow as a reserve for operating expenses, are qualifying assets subject to all of the following conditions:

(A) The governing instrument restricts the assets so that they may be used only to pay operating costs when operating funds are insufficient.

(B) The provider furnishes to the department a copy of the agreement under which the assets are held, certified by the provider to be a correct and complete copy. The provider, escrow holder, or other entity holding the assets shall agree to provide to the department any information the department may request concerning the account.

(C) The market value, or the guaranteed value, if applicable, of the restricted assets, up to the amount the provider is required to hold as an operating expense reserve under Section 1792.4, will be included as part of the provider's liquid reserve.

(D) The restricted assets described in this paragraph shall not reduce or count towards the amount the provider is required to hold in its liquid reserve for long-term debt.

(b) Except as otherwise provided in this subdivision, the assets held by the provider as its liquid reserve may not be subject to any liens, charges, judgments, garnishments, or creditors' claims and may not be hypothecated, pledged as collateral, or otherwise

encumbered in any manner. A provider may encumber assets held in its liquid reserve as part of a general security pledge of assets or similar collateralization that is part of the provider's long-term capital debt covenants and is included in the provider's long- term debt indenture or similar instrument.

1792.3. Debt Service Reserve Amount.

(a) Each provider shall include in its liquid reserve a reserve for its long-term debt obligations in an amount equal to the sum of all of the following:

(1) All regular principal and interest payments, as well as credit enhancement premiums, paid by the provider during the immediately preceding fiscal year on account of any fully amortizing long-term debt owed by the provider. If a provider has incurred new long-term debt during the immediately preceding fiscal year, the amount required by this paragraph for that debt is 12 times the provider's most recent monthly payment on the debt.

(2) Facility rental or leasehold payments, and any related payments such as lease insurance, paid by the provider during the immediately preceding fiscal year.

(3) All payments paid by the provider during the immediately preceding fiscal year on account of any debt that provides for a balloon payment. If the balloon payment debt was incurred within the immediately preceding fiscal year, the amount required by this paragraph for that debt is 12 times the provider's most recent monthly payment on the debt made during the fiscal year.

(b) If any balloon payment debt matures within the next 24 months, the provider shall submit with its annual report a plan for refinancing the debt or repaying the debt with existing assets.

(c) When principal and interest payments on long-term debt are paid to a trust whose beneficial interests are held by the residents, the department may waive all or any portion of the debt service reserve required by this section. The department shall not waive any debt service reserve requirement unless the department finds that the waiver is consistent with the financial protections imposed by this chapter.

1792.4. Operating Expense Reserve Amount.

(a) Each provider shall include in its liquid reserve a reserve for its operating expenses in an amount that equals or exceeds 75 days' net operating expenses. For purposes of this section:

(1) Seventy-five days net operating expenses shall be calculated by dividing the provider's operating expenses during the immediately preceding fiscal year by 365, and multiplying that quotient by 75.

(2) "Net operating expenses" includes all expenses except the following:

(A) The interest and credit enhancement expenses factored into the provider's calculation of its long-term debt reserve obligation described in Section 1792.3.

(B) Depreciation or amortization expenses.

(C) An amount equal to the reimbursement paid to the provider during the past 12 months for services to residents other than residents holding continuing care contracts.

(D) Extraordinary expenses that the department determines may be excluded by the provider. A provider shall apply in writing for a determination by the department and shall provide supporting documentation prepared in accordance with generally accepted accounting principles.

(b) A provider that has been in operation for less than 12 months shall calculate its net operating expenses by using its actual expenses for the months it has operated and, for the remaining months, the projected net operating expense amounts it submitted to the department as part of its application for a certificate of authority.

1792.5. Reporting; Certification of Compliance.

(a) The provider shall compute its liquid reserve requirement as of the end of the provider's most recent fiscal yearend based on its audited financial statements for that period and, at the time it files its annual report, shall file a form acceptable to the department certifying all of the following:

(1) The amount the provider is required to hold as a liquid reserve, including the amounts required for the debt service reserve and the operating expense reserve.

(2) The qualifying assets, and their respective values, the provider has designated for its debt service reserve and for its operating expense reserve.

(3) The amount of any deficiency or surplus for the provider's debt service reserve and the provider's operating expense reserve.

(b) For the purpose of calculating the amount held by the provider to satisfy its liquid reserve requirement, all qualifying assets used to satisfy the liquid reserve requirements shall be valued at their fair market value as of the end of the provider's most recently completed fiscal year. Restricted assets that have guaranteed values and are designated as qualifying assets under paragraph (6) or (7) of subdivision (a) of Section 1792.2 may be valued at their guaranteed values.

1792.6. Refund Reserve; Escrow Required; Amount.

(a) Any provider offering a refundable contract, or other entity assuming responsibility for refundable contracts, shall maintain a refund reserve in trust for the residents. The amount of the refund reserve shall be revised annually by the provider and the provider shall submit its calculation of the refund reserve amount to the department in conjunction with the annual report required by Section 1790. This reserve shall accumulate interest and earnings and shall be invested in any of the following:

(1) Qualifying assets as defined in Section 1792.2.

(2) Real estate, subject to all of the following conditions:

(A) To the extent approved by the department, the trust account may invest up to 70 percent of the refund reserves in real estate that is both used to provide care and

housing for the holders of the refundable continuing care contracts and is located on the same campus where these continuing care contract holders reside.

(B) Investments in real estate shall be limited to 50 percent of the providers' net equity in the real estate. The net equity shall be the book value, assessed value, or current appraised value within 12 months prior to the end of the fiscal year, less any depreciation, and encumbrances, all according to audited financial statements acceptable to the department.

(b) Each refund reserve trust shall be established at an institution qualified to be an escrow agent. The escrow agreement between the provider and the institution shall be in writing and include the terms and conditions described in this section. The escrow agreement shall be submitted to and approved by the department before it becomes effective.

(c) The amount to be held in the reserve shall be the total of the amounts calculated with respect to each individual resident holding a refundable contract as follows:

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

(2) Determine life expectancy of that individual based on all of the following rules:

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

Age	Females	Males	Age	Females	Males
55	26.323	23.635	83	7.952	6.269
56	25.526	22.863	84	7.438	5.854
57	24.740	22.101	85	6.956	5.475
58	23.964	21.350	86	6.494	5.124
59	23.199	20.609	87	6.054	4.806
60	22.446	19.880	88	5.613	4.513
61	21.703	19.163	89	5.200	4.236
62	20.972	18.457	90	4.838	3.957
63	20.253	17.764	91	4.501	3.670
64	19.545	17.083	92	4.175	3.388
65	18.849	16.414	93	3.862	3.129
66	18.165	15.759	94	3.579	2.903
67	17.493	15.116	95	3.329	2.70

68	16.832	14.486
69	16.182	13.869
70	15.553	13.268
71	14.965	12.676
72	14.367	12.073

		5
96	3.109	2.533
97	2.914	2.384
98	2.741	2.254
99	2.584	2.137
100	2.433	2.026

Age	Females	Males	Age	Females	Males
73	13.761	11.445	101	2.289	1.919
74	13.189	10.830	102	2.152	1.818
75	12.607	10.243	103	2.022	1.723
76	12.011	9.673	104	1.899	1.637
77	11.394	9.139	105	1.784	1.563
78	10.779	8.641	106	1.679	1.510
79	10.184	8.159	107	1.588	1.500
80	9.620	7.672	108	1.522	1.500
81	9.060	7.188	109	1.500	1.500
82	8.501	6.719	110	1.500	1.500

(B) If there is a couple, the life expectancy for the person with the longer life expectancy shall be used.

(C) The life expectancy table set forth in this paragraph shall be used until expressly provided to the contrary through the amendment of this section.

(D) For residents over 110 years of age, 1.500 years shall be used in computing life expectancy.

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

(3) For that resident, use an interest rate of 6 percent or lower to determine from compound interest tables the factor that, when multiplied by one dollar ($1), represents the amount, at the time the computation is made, that will grow at the assumed compound interest rate to one dollar ($1) at the end of the period of the life expectancy of the resident.

(4) Multiply the refundable portion of the resident's entry fee amount by the factor obtained in paragraph (3) to determine the amount of reserve required to be maintained.

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

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

(d) Withdrawals may be made from the trust to pay refunds when due under the terms of the refundable entrance fee contracts and when the balance in the trust exceeds the required refund reserve amount determined in accordance with subdivision (c).

(e) Deposits shall be made to the trust with respect to new residents when the entrance

fee is received and in the amount determined with respect to that resident in accordance with subdivision (c).

(f) Additional deposits shall be made to the trust fund within 30 days of any annual reporting date on which the trust fund balance falls below the required reserve in accordance with subdivision (c) and the deposits shall be in an amount sufficient to bring the trust balance into compliance with this section.

(g) Providers who have used a method previously allowed by statute to satisfy their refund reserve requirement may continue to use that method.

1792.7. Legislative Intent – Provider Financial Reporting Requirements

(a) The Legislature finds and declares all of the following:

(1) In continuing care contracts, providers offer a wide variety of living accommodations and care programs for an indefinite or extended number of years in exchange for substantial payments by residents.

(2) The annual reporting and reserve requirements for each continuing care provider should include a report that summarizes the provider's recent and projected performance in a form useful to residents, prospective residents, and the department.

(3) Certain providers enter into "life care contracts" or similar contracts with their residents. Periodic actuarial studies that examine the actuarial financial condition of these providers will help to assure their long-term financial soundness.

(b) Each provider shall annually file with the department a report that shows certain key financial indicators for the provider's past five years, based on the provider's actual experience, and for the upcoming five years, based on the provider's projections. Providers shall file their key indicator reports in the manner required by Section 1792.9 and in a form prescribed by the department.

(c) Each provider that has entered into Type A contracts shall file with the department an actuary's opinion as to the actuarial financial condition of the provider's continuing care operations in the manner required by Section 1792.10.

1792.8. Actuarial Definitions.

(a) For purposes of this article, "actuarial study" means an analysis that addresses the current actuarial financial condition of a provider that is performed by an actuary in accordance with accepted actuarial principles and the standards of practice adopted by the Actuarial Standards Board. An actuarial study shall include all of the following:

(1) An actuarial report.

(2) A statement of actuarial opinion.

(3) An actuarial balance sheet.

(4) A cohort pricing analysis.

(5) A cash flow projection.

(6) A description of the actuarial methodology, formulae, and assumptions.

(b) "Actuary" means a member in good standing of the American Academy of Actuaries who is qualified to sign a statement of actuarial opinion.

(c) "Type A contract" means a continuing care contract that has an up-front entrance fee and includes provision for housing, residential services, amenities, and unlimited

specific health-related services with little or no substantial increases in monthly charges, except for normal operating costs and inflation adjustments.

1792.9. Key Indicators Report.

(a) All providers shall file annually with the department a financial report disclosing key financial ratios and other key indicators in a form determined by the department.

(b) The department shall issue a "Key Indicators Report" form to providers that shall be used to satisfy the requirements of subdivision (a). The Key Indicators Report shall require providers to disclose the following information:

(1) Operational data indicating the provider's average annual occupancy by facility.

(2) Margin ratios indicating the provider's net operating margin and net operating margin adjusted to reflect net proceeds from entrance fees.

(3) Liquidity indicators stating both the provider's total cash and investments available for operational expenses and the provider's days cash on hand.

(4) Capital structure indicators stating the provider's dollar figures for deferred revenue from entrance fees, net annual entrance fee proceeds, unrestricted net assets, and annual capital expenditure.

(5) Capital structure ratios indicating the provider's annual debt service coverage, annual debt service coverage adjusted to reflect net proceeds from entrance fees, annual debt service over revenue percentage, and unrestricted cash over long-term debt percentage.

(6) Capital structure indicators stating the provider's average age of facility calculation based on accumulated depreciation and the provider's average annual effective interest rate.

(c) The department shall determine the appropriate formula for calculating each of the key indicators included in the Key Indicator Report. The department shall base each formula on generally accepted standards and practices related to the financial analysis of continuing care providers and entities engaged in similar enterprises.

(d) Each provider shall file its annual Key Indicators Report within 30 days following the due date for the provider's annual report. If the Key Indicators Report is not received by the department by the date it is due, the provider shall pay a one thousand dollar ($1,000) late fee at the time the report is submitted. The provider shall pay an additional late fee of thirty-three dollars ($33) for each day the report is late beyond 30 days. For purposes of this section, a provider's Key Indicators Report is not submitted to the department until the provider has paid all accrued late fees.

1792.10. Actuarial Study Required.

(a) Each provider that has entered into Type A contracts shall submit to the department, at least once every five years, an actuary's opinion as to the provider's actuarial financial condition. The actuary's opinion shall be based on an actuarial study completed by the opining actuary in a manner that meets the requirements described in Section 1792.8. The actuary's opinion, and supporting actuarial study, shall examine, refer to, and opine on the provider's actuarial financial condition as of a

specified date that is within four months of the date the opinion is provided to the department.

(b) Each provider required to file an actuary's opinion under subdivision (a) that held a certificate of authority on December 31, 2003, shall file its actuary's opinion before the expiration of five years following the date it last filed an actuarial study or opinion with the department. Thereafter, the provider shall file its required actuary's opinion before the expiration of five years following the date it last filed an actuary's opinion with the department.

(c) Each provider required to file an actuary's opinion under subdivision (a) that did not hold a certificate of authority on December 31, 2003, shall file its first actuary's opinion within 45 days following the due date for the provider's annual report for the fiscal year in which the provider obtained its certificate of authority. Thereafter, the provider shall file its required actuary's opinion before the expiration of five years following the date it last filed an actuary's opinion with the department.

(d) The actuary's opinion required by subdivision (a) shall comply with generally accepted actuarial principles and the standards of practice adopted by the Actuarial Standards Board. The actuary's opinion shall also include statements that the data and assumptions used in the underlying actuarial study are appropriate and that the methods employed in the actuarial study are consistent with sound actuarial principles and practices. The actuary's opinion must state whether the provider has adequate resources to meet all its actuarial liabilities and related statement items, including an appropriate surplus, and whether the provider's financial condition is actuarially sound.

1793. Reserves for Refundable Contracts.

ADVISORY
Section 1793 is superseded by Section 1792.6
(SB 2077, Chapter 820, Statutes of 2000)

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

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

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

(2) To the extent approved by the department, the trust account may invest up to 70 percent of the refund reserves in real estate that is used to provide care and housing

for the holders of the refundable continuing care contracts and is located on the same campus where these continuing care contract holders reside.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Any provider which has executed refundable contracts in a continuing care retirement community prior to January 1, 1996, and which has not executed refundable contracts in a continuing care retirement community prior to January 1, 1991, shall submit, for the department's approval, a method of determining a refund reserve to be held in trust for the residents. Approved methods include any of the following:

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

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

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

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

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

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

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

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

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

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

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

(8) Determine the factor for inflating the mean entrance fee at the rate of 3 percent below the interest rate on new 30-year treasury bonds, for each year from the current date to the 40th year of operation, or until all units have been turned over.

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

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

(11) The projected refund liability shall be the sum of the products obtained pursuant to paragraph (10), multiplied by the rate of refund for the seventh year of residency, specified by current continuing care contracts, multiplied by the percentage of current

continuing care contracts which specify this rate of refund. The projected refund liability amount shall be calculated for each rate, if existing continuing care contracts specify several rates.

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

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

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

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

(A) The "stockholders' equity," or equivalent amount, as reflected on the most recent Form 10K (which may be on a consolidated basis or on a consolidated and combined basis) filed with the Securities and Exchange Commission.

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

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

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

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

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

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

Article 7. Offenses and Penalties

1793.5. Misdemeanors.

(a) An entity that accepts deposits and proposes to promise to provide care without having a current and valid permit to accept deposits is guilty of a misdemeanor.

(b) An entity that accepts deposits and fails to place any deposit received into an escrow account as required by this chapter is guilty of a misdemeanor.

(c) An entity that executes a continuing care contract without holding a current and valid provisional certificate of authority or certificate of authority is guilty of a misdemeanor.

(d) An entity that abandons a continuing care retirement community or its obligations under a continuing care contract is guilty of a misdemeanor. An entity that violates this section shall be liable to the injured resident for treble the amount of damages assessed in any civil action brought by or on behalf of the resident in any court having proper jurisdiction. The court may, in its discretion, award all costs and attorney fees to the injured resident, if that resident prevails in the action.

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

(f) An entity that issues, delivers, or publishes, or as manager or officer or in any other administrative capacity, assists in the issuance, delivery, or publication of any printed matter, oral representation, or advertising material which does not comply with the requirements of this chapter is guilty of a misdemeanor.

(g) A violation of subdivision (f) by an entity will constitute cause for the suspension of all and any licenses, permits, provisional certificates of authority, and certificates of authority issued to that entity by any agency of the state.

(h) A violation under this section is an act of unfair competition as defined in Section 17200 of the Business and Professions Code.

1793.6. Civil Penalties.

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

(b) If upon inspection or investigation, the department has probable cause to believe that an entity is violating Section 1771.2 or 1793.5, the department may issue a citation to that entity. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement. In addition to the administrative fines imposed pursuant to Section 1793.27, an entity that violates the abatement order shall be liable for a civil penalty in the amount of two hundred dollars ($200) per day for violation of the abatement order.

(c) The civil penalty authorized in subdivision (b) shall be imposed if a continuing care retirement community is operated without a provisional certificate of authority or certificate of authority and the operator refuses to seek a certificate of authority or the

operator seeks a certificate of authority and the application is denied and the operator continues to operate the continuing care retirement community without a provisional certificate of authority or certificate of authority, unless other remedies available to the department, including prosecution, are deemed more appropriate by the department.

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

(e) Within 15 days after service of a citation under this section, an entity may appeal in writing to the department with respect to the violations alleged, the scope of the order of abatement, or the amount of civil penalty assessed.

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

(g) If the entity cited under this section makes a timely appeal of the citation, the department shall provide an opportunity for a hearing. The department shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.

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

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

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

1793.7. Forfeiture.

A permit to accept deposits, a provisional certificate of authority, or a certificate of authority shall be forfeited by operation of law when any one of the following occurs:

(a) The applicant terminates marketing for the proposed continuing care retirement community.

(b) The applicant or provider surrenders to the department its residential care facility for the elderly license, the permit to accept deposits, provisional certificate of authority, or certificate of authority for a continuing care retirement community.

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

(d) A change occurs in the majority ownership of the continuing care retirement community or the certificate of authority holder.

(e) The applicant or provider merges with another entity.

(f) The applicant or entity makes a material change in a pending application which requires a new application pursuant to subdivision (c) of Section 1779.8.

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

(h) The applicant or provider abandons the continuing care retirement community or its obligations under the continuing care contracts.

(i) The applicant or provider is evicted from the continuing careretirement community premises.

1793.8. Inactive Certificate of Authority.

A Certificate of Authority shall be automatically inactivated when a provider voluntarily ceases to enter into continuing care contracts with new residents. The provider shall notify the department of its intention to cease entering into continuing care contracts and shall continue to comply with all provisions of this chapter until all continuing care contract obligations have been fulfilled.

1793.9. Preferred Claim.

(a) In the event of receivership or liquidation, all claims made against a provider based on the provider's continuing care contracts shall be preferred claims against all assets owned by the provider. However, these preferred claims shall be subject to any perfected claims secured by the provider's assets.

(b) If the provider is liquidated, residents who have executed a refundable continuing care contract shall have a preferred claim to liquid assets held in the refund reserve pursuant to Section 1792.6. This preferred claim shall be superior to all other claims from residents without refundable contracts or other creditors. If this fund and any other available assets are not sufficient to fulfill the refund obligations, each resident shall be distributed a proportionate amount of the refund reserve funds determined by dividing the amount of each resident's refund due by the total refunds due and multiplying that percentage by the total funds available.

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

1793.11. Voidable Transfer; Rescission.

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

(b) Any deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to rescission by the resident or transferor within 90 days from the date of first occupancy.

(c) No action may be brought for the reasonable value of any services rendered between the date of transfer and the date the resident disaffirms the continuing care contract.

(d) With respect to real property, the right of disaffirmance or rescission is conclusively presumed to have terminated if a notice of intent to rescind is not recorded with the county recorder of the county in which the real property is located within 90 days from the date of first occupancy of the residential living unit.

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

(f) A transaction determined by the department to be in violation of this chapter is voidable at the option of the resident or his or her assignees or agents.

1793.13. Unsound Financial Condition.

(a) The department may require a provider to submit a financial plan, if either of the following applies:

(1) A provider fails to file a complete annual report as required by Section 1790.

(2) The department has reason to believe that the provider is insolvent, is in imminent danger of becoming insolvent, is in a financially unsound or unsafe condition, or that its condition is such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts.

(b) A provider shall submit its financial plan to the department within 60 days following the date of the department's request. The financial plan shall explain how and when the provider will rectify the problems and deficiencies identified by the department.

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

(d) If the plan is approved, the provider shall immediately implement the plan.

(e) If the plan is disapproved, or if it is determined that the plan is not being fully implemented, the department may consult with its financial consultants to develop a corrective action plan at the provider's expense, or require the provider to obtain new or additional management capability approved by the department to solve its difficulties. A reasonable period, as determined by the department, shall be allowed for the reorganized management to develop a plan which, subject to the approval of the department, will reasonably assure that the provider will meet its responsibilities under the law.

1793.15. Lien for Transferors; Release of Lien, Conditions.

(a) When necessary to secure an applicant's or a provider's performance of its obligations to depositors or residents, the department may record a notice or notices of lien on behalf of the depositors or residents. From the date of recording, the lien shall attach to all real property owned or acquired by the provider during the pendency of the lien, provided the property is not exempt from the execution of a lien and is located within the county in which the lien is recorded. The lien shall have the force, effect, and priority of a judgment lien.

(b) The department may record a lien on any real property owned by the provider if the provider's annual report indicates the provider has an unfunded statutory or refund requirement. A lien filed pursuant to this section shall have the effect, force, and priority of a judgment lien filed against the property.

(c) The department shall file a release of the lien if the department determines that the lien is no longer necessary to secure the applicant's or provider's performance of its obligations to the depositors or residents.

(d) Within 10 days following the department's denial of a request for a release of the lien, the applicant or provider may file an appeal with the department.

(e) The department's final decision shall be subject to court review pursuant to Section 1094.5 of the Code of Civil Procedure, upon petition of the applicant or provider filed within 30 days of service of the decision.

1793.17. Return of Funds to Escrow.

(a) When necessary to secure the interests of depositors or residents, the department may require that the applicant or provider reestablish an escrow account, return previously released moneys to escrow, and escrow all future entrance fee payments.

(b) The department may release funds from escrow as it deems appropriate or terminate the escrow requirement when it determines that the escrow is no longer necessary to secure the performance of all obligations of the applicant or provider to depositors or residents.

1793.19. Nonexclusive Remedies.

The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive and may be sought and employed by the department, in any combination to enforce this chapter.

1793.21. Condition, Suspension, or Revocation of Certificate of Authority.

The department, in its discretion, may condition, suspend, or revoke any permit to accept deposits, provisional certificate of authority, or certificate of authority issued under this chapter if it finds that the applicant or provider has done any of the following:

(a) Violated this chapter or the rules and regulations adopted under this chapter.

(b) Aided, abetted, or permitted the violation of this chapter or the rules and regulations adopted under this chapter.

(c) Had a license suspended or revoked pursuant to the licensing provisions of Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(d) Made a material misstatement, misrepresentation, or fraud in obtaining the permit to accept deposits, provisional certificate of authority, or certificate of authority.

(e) Demonstrated a lack of fitness or trustworthiness.

(f) Engaged in any fraudulent or dishonest practices of management in the conduct of business.

(g) Misappropriated, converted, or withheld moneys.

(h) After request by the department for an examination, access to records, or information, refused to be examined or to produce its accounts, records, and files for examination, or refused to give information with respect to its affairs, or refused to perform any other legal obligations related to an examination.

(i) Manifested an unsound financial condition.

(j) Used methods and practices in the conduct of business so as to render further transactions by the provider or applicant hazardous or injurious to the public.

(k) Failed to maintain at least the minimum statutory reserves required by Section 1792.2.

(l) Failed to maintain the reserve fund escrow account for prepaid continuing care contracts required by Section 1792.

(m) Failed to comply with the refund reserve requirements stated in Section 1793.[3]

(n) Failed to comply with the requirements of this chapter for maintaining escrow accounts for funds.

(o) Failed to file the annual report described in Section 1790.

(p) Violated a condition on its permit to accept deposits, provisional certificate of authority, or certificate of authority.

(q) Failed to comply with its approved financial and marketing plan or to secure approval of a modified plan.

(r) Materially changed or deviated from an approved plan of operation without the prior consent of the department.

(s) Failed to fulfill his or her obligations under continuing care contracts.

(t) Made material misrepresentations to depositors, prospective residents, or residents of a continuing care retirement community.

(u) Failed to submit proposed changes to continuing care contracts prior to use, or using a continuing care contract that has not been previously approved by the department.

(v) Failed to diligently submit materials requested by the department or required by the statute.

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[3] Section 1793 has been superseded by section 1792.6. (SB 2077, Chapter 820, Statutes of 2000)

1793.23. Right of Appeal; Removal of Condition or Suspension.

(a) If the department conditions, suspends, or revokes any permit to accept deposits, provisional certificate of authority, or certificate of authority issued pursuant to this chapter, the provider shall have a right of appeal to the department. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all of the powers granted therein. A suspension, condition, or revocation shall remain in effect until completion of the proceedings in favor of the provider. In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by a preponderance of the evidence.

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

1793.25. Provider Obligations While Action is Pending.

(a) During the period that the revocation or suspension action is pending against the permit to accept deposits, provisional certificate of authority, or certificate of authority, the provider shall not enter into any new deposit agreements or continuing care contracts.

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

1793.27. Administrative Fines.

(a) If the department finds that any entity has violated Section 1793.5 or one or more grounds exist for conditioning, revoking, or suspending a permit to accept deposits, provisional certificate of authority, or a certificate of authority issued under this chapter, the department, in lieu of the condition, revocation, or suspension, may impose an administrative fine upon an applicant or provider in an amount not to exceed one thousand dollars ($1,000) per violation.

(b) The administrative fine shall be deposited in the Continuing Care Provider Fee Fund and shall be disbursed for the specific purposes of offsetting the costs of investigation and litigation and to compensate court-appointed administrators when continuing care retirement community assets are insufficient.

1793.29. Injunctive or Equitable Relief.

In the case of any violation or threatened violation of this chapter, the department may institute a proceeding or may request the Attorney General to institute a proceeding to obtain injunctive or other equitable relief in the superior court in and for the county in which the violation has occurred or will occur, or in which the principal place of business of the provider is located. The proceeding under this section shall conform with the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required

of the department in any action commenced under this section, nor shall the department be required to allege facts necessary to show lack of adequate remedy at law, or to show irreparable loss or damage.

1793.31. Prosecutions by District Attorney.

(a) The district attorney of every county may, upon application by the department or its authorized representative, institute and conduct the prosecution of any action for violation of this chapter within his or her county.

(b) This chapter shall not limit or qualify the powers of the district attorney to institute and conduct the prosecution of any action brought for the violation within his or her county of this chapter or any other provision of law, including, but not limited to, actions for fraud or misrepresentation.

(c) The department shall provide access to any records in its control on request of a district attorney and shall cooperate in any investigation by a district attorney.

Article 8. Appointment of Administrator

1793.50. Appointment of Administrator.

(a) The department may petition the superior court for an order appointing a qualified administrator to operate a continuing care retirement community, and thereby mitigate imminent crisis situations where elderly residents could lose support services or be moved without proper preparation, in any of the following circumstances:

(1) The provider is insolvent or in imminent danger of becoming insolvent.

(2) The provider is in a financially unsound or unsafe condition.

(3) The provider has failed to establish or has substantially depleted the reserves required by this chapter.

(4) The provider has failed to submit a plan, as specified in Section 1793.13, the department has not approved the plan submitted by the provider, the provider has not fully implemented the plan, or the plan has not been successful.

(5) The provider is unable to fully perform its obligations pursuant to continuing care contracts.

(6) The residents are otherwise placed in serious jeopardy.

(b) The administrator may only assume the operation of the continuing care retirement community in order to accomplish one or more of the following: rehabilitate the provider to enable it fully to perform its continuing care contract obligations; implement a plan of reorganization acceptable to the department; facilitate the transition where another provider assumes continuing care contract obligations; or facilitate an orderly liquidation of the provider.

(c) With each petition, the department shall include a request for a temporary restraining order to prevent the provider from disposing of or transferring assets pending the hearing on the petition.

(d) The provider shall be served with a copy of the petition, together with an order to appear and show cause why management and possession of the provider's continuing care retirement community or assets should not be vested in an administrator.

(e) The order to show cause shall specify a hearing date, which shall be not less than five nor more than 10 days following service of the petition and order to show cause on the provider.

(f) Petitions to appoint an administrator shall have precedence over all matters, except criminal matters, in the court.

(g) At the time of the hearing, the department shall advise the provider and the court of the name of the proposed administrator.

(h) If, at the conclusion of the hearing, including such oral evidence as the court may consider, the court finds that any of the circumstances specified in subdivision (a) exist, the court shall issue an order appointing an administrator to take possession of the property of the provider and to conduct the business thereof, enjoining the provider from interfering with the administrator in the conduct of the rehabilitation, and

directing the administrator to take steps toward removal of the causes and conditions which have made rehabilitation necessary, as the court may direct.

(i) The order shall include a provision directing the issuance of a notice of the rehabilitation proceedings to the residents at the continuing care retirement community and to other interested persons as the court may direct.

(j) The court may permit the provider to participate in the continued operation of the continuing care retirement community during the pendency of any appointments ordered pursuant to this section and shall specify in the order the nature and scope of the participation.

(k) The court shall retain jurisdiction throughout the rehabilitation proceeding and may issue further orders as it deems necessary to accomplish the rehabilitation or orderly liquidation of the continuing care retirement community in order to protect the residents of the continuing care retirement community.

1793.52. Notification to Residents.

The court-appointed administrator shall immediately notify the residents of that appointment and of the status of the continuing care retirement community management.

1793.54. Powers and Duties of Administrator.

If an administrator is appointed to rehabilitate a provider, the administrator may do any of the following:

(a) Take possession of and preserve, protect and recover any assets, books, records, or property of the provider, including, but not limited to, claims or causes of action belonging to, or which may be asserted by, the provider.

(b) Deal with the property in the administrator's name in the capacity as administrator, and purchase at any sale any real estate or other asset upon which the provider may hold any lien or encumbrance or in which the provider may have an interest.

(c) File, prosecute, and defend or compromise any suit or suits which have been filed, or which may thereafter be filed, by or against the provider as necessary to protect the provider or the residents or any property affected thereby.

(d) Deposit and invest any of the provider's available funds.

(e) Pay all expenses of the rehabilitation.

(f) Perform all duties of the provider in the provision of care and services to residents in the continuing care retirement community at the time the administrator takes possession.

(g) Facilitate the orderly transfer of residents should the provider ultimately fail.

(h) Exercise any other powers and duties as may be authorized by law or provided by order of the court.

1793.56. Compensation and Indemnification of Administrator.

(a) The appointed administrator is entitled to reasonable compensation.

(b) The costs compensating the administrator may be charged against the assets of the provider. When the provider's assets and assets from the continuing care retirement community are insufficient, the department, in its discretion, may compensate the administrator from the Continuing Care Provider Fee Fund.

(c) Any individual appointed administrator, pursuant to Section 1793.50, shall be held harmless for any negligence in the performance of his or her duties and the provider shall indemnify the administrator for all costs of defending actions brought against him or her in his or her capacity as administrator.

1793.58. Order for Termination of Rehabilitation Proceedings Upon Successful Completion of Rehabilitation.

(a) The department, administrator, or any interested person, upon due notice to the administrator, at any time, may apply to the court for an order terminating the rehabilitation proceedings and permitting the provider to resume possession of the provider's property and the conduct of the provider's business.

(b) The court shall not issue the order requested pursuant to subdivision (a) unless, after a full hearing, the court has determined that the purposes of the proceeding have been fully and successfully accomplished and that the continuing care retirement community can be returned to the provider's management without further jeopardy to the residents of the continuing care retirement community, creditors, owners of the continuing care retirement community, and to the public.

(c) Before issuing any order terminating the rehabilitation proceeding the court shall consider a full report and accounting by the administrator regarding the provider's affairs, including the conduct of the provider's officers, employees, and business during the rehabilitation and the provider's current financial condition.

(d) Upon issuance of an order terminating the rehabilitation, the department shall reinstate the provisional certificate of authority or certificate of authority. The department may condition, suspend, or revoke the reinstated certificate only upon a change in the conditions existing at the time of the order or upon the discovery of facts which the department determines would have resulted in a denial of the request for an order terminating the rehabilitation had the court been aware of these facts.

1793.60. Order for Liquidation or Dissolution of Provider.

(a) If at any time the department determines that further efforts to rehabilitate the provider would not be in the best interest of the residents or prospective residents, or would not be economically feasible, the department may apply to the court for an order of liquidation and dissolution or may apply for other appropriate relief for dissolving the property and bringing to conclusion its business affairs.

(b) Upon issuance of an order directing the liquidation or dissolution of the provider, the department shall revoke the provider's provisional certificate of authority or certificate of authority.

1793.62. Request to Terminate Order for Appointing Administrator Upon Failure of Rehabilitation.

(a) The department, administrator, or any interested person, upon due notice to the parties, may petition the court for an order terminating the rehabilitation proceedings when the rehabilitation efforts have not been successful, the continuing care retirement community has been sold at foreclosure sale, the provider is the subject of an order for relief in bankruptcy, or the provider has otherwise been shown to be unable to perform its obligations under the continuing care contracts.

(b) The court shall not issue the order requested pursuant to subdivision (a) unless all of the following have occurred:

(1) There has been a full hearing and the court has determined that the provider is unable to perform its contractual obligations.

(2) The administrator has given the court a full and complete report and financial accounting signed by the administrator as being a full and complete report and accounting.

(3) The court has determined that the residents of the continuing care retirement community have been protected to the extent possible and has made such orders in this regard as the court deems proper.

Article 9. Continuing Care Retirement Community Closure

1793.80. Closure Notice.

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

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

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

2. No action can be taken to relocate any resident or to close the facility until the permanent closure and relocation plan has been prepared and provided to the department, the affected residents of the facility and their designated representatives, and to the local long-term care ombudsman program."

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

1793.81. Closure and Relocation Plan.

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

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

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

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

(2) Affected residents in assisted living units.

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

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

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

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

(f) The names and addresses of other continuing care retirement communities within 30 miles of the closing continuing care retirement community facility that provide comparable replacement housing and care, if applicable, to those offered at the facility that is scheduled for closure, and whether the facilities have immediate openings available to residents of the closing facility.

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

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

1793.82. Permanent Closure Options.

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

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

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

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

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

(b) Replacement housing offered pursuant to paragraph (1) or (2) of subdivision (a) shall be housing that is, overall, comparable in cost, size, services, features, and amenities to the unit being vacated. If the resident chooses either of the replacement housing options in paragraph (1) or (2) of subdivision (a), the provider shall provide the reasonable costs of moving, storage, if applicable, and transportation.

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

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

1793.83. Reserve, Trust Fund, or Performance Bond Required.

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

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

1793.84. Monthly Progress Reports Required.

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

(b) The department shall monitor the implementation of the permanent closure as defined in paragraph (3) of subdivision (p) of Section 1771 and relocation plan as necessary to ensure full compliance by the provider. If the department determines that a provider is closing a facility in violation of this article or is doing so in a manner that endangers the health or safety of residents, it shall exercise its powers under Article 7 (commencing with Section 1793.5).

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

Article 10. Residential Temporary Relocation

1793.90. Residential Temporary Relocation.

(a) All providers shall include in resident contracts the procedures to be followed to ensure that residential temporary relocations provide comparable levels of care, services, and living accommodations as described in the resident's contract.

(b) The provider shall notify the resident of the impending relocation at least 60 days in advance of the relocation.

(c) The provider shall meet with the resident and, at the resident's request, family members or other individuals, at least 30 days in advance of the transfer to discuss all aspects of the transfer, including, but not limited to, the rights, requirements, and procedures set forth in this article. Notice of this meeting shall be provided in writing and at least seven days in advance of the meeting and shall include all of the following information:

(1) The date of the transfer.

(2) The available replacement unit or units and monthly fees.

(3) The time when the resident will be able to inspect the replacement unit or units.

(4) The estimated date when the resident will be able to return to his or her unit or may move to a substitute permanent unit.

(d) If accommodations are not available at a continuing care retirement community operated by the provider within a 30-mile radius, the provider shall be required to provide a unit in a facility, agreed to by the resident, that most closely provides the services, size, features, and amenities provided in the unit being vacated.

(e) The provider shall be required to arrange and pay for all moving costs to the new facility and moving costs to the reconstructed facility, if the resident returns, as well as storage costs.

(f) The resident shall only be required to pay to the provider the monthly fee required in the resident's contract, or the monthly fee in the new facility, whichever is less. The provider shall be required to make payment to the facility to which the resident is relocated.

(g) Upon request by the resident or the resident's representative, the provider shall make available the services of a licensed medical or geriatric professional to advise the resident, the resident's representative, and the provider regarding the relocation of the resident. The provider may place a reasonable limit on the cost of the services of the medical or geriatric professional.

(h) The provider shall identify unique service and care needs, if applicable, for a resident directly affected by the residential temporary relocation. The unique services and care needs identified shall be in writing and shall become a part of the resident's plan of care.

1793.91. Return of Relocated Resident.

The provider shall set forth specific procedures for the resident to follow regarding relocation to the unit originally vacated, the selection of a new unit, and timeframes for

making choices. Procedures for returning the relocated resident when residential units will be ready for occupancy shall include all of the following:

(a) The provider shall provide the resident at least 60 days notice of the return to his or her unit or a substitute permanent unit, and subsequent notices 30 days and seven days prior to the return date.

(b) The resident shall have the right to return to his or her previously occupied unit or a unit comparable in services, size, features, and amenities to the unit originally vacated, without payment of any further entrance or accommodation fee. The provider is not required to guarantee a specific unit. Assignment of units shall be based upon the length of occupancy of returning residents.

(c) If the residential temporary relocation of a resident of a continuing care retirement community will exceed 18 months, the resident shall have all options allowed by Section 1793.82, unless there is a written agreement between the affected resident and the provider as described in subdivision (d).

(d) If a provider determines that the period of residential temporary relocation, as defined in paragraph (8) of subdivision (r) of Section 1771, will exceed 18 months, the provider may extend the period of residential temporary relocation for up to six months for an affected resident if that resident has agreed to the extension in writing. The written agreement shall state that by signing, the resident waives all rights to relocation options offered in Section 1793.82 for the period of the extension.

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Type of Care – Summary of Care Options:

EXECUTIVE SUMMARY - SKILLED NURSING, NURSING HOMES, ASSISTED LIVING

The terms "nursing home" and "skilled nursing facility" are often used interchangeably, but the two are radically different-both in function and financial structure. **Skilled nursing (SNF) and nursing homes** are generally individual facilities with two entirely separate and often conflicting clinical missions serving two very distinct kinds of patients.

Skilled Nursing Facilities (SNF) are sometimes part of larger nursing homes or even part of an acute care facility (hospital). The term skilled nursing refers to the level of medical care required by patients. Skilled care includes nursing services such as intravenous therapy. Care is generally paid for by Medicare.

Skilled nursing staff consists of the following professionals:

- Registered nurses (RNs) and licensed practical nurses (LPNs)
- Physical and occupational therapists
- Speech-language pathologists
- Audiologists

Skilled nursing care can be understood as care of short duration that must be provided by a skilled or licensed professional, and it must be certified as medically necessary by a licensed physician.

Physical, occupation and speech therapy play an integral role in recovery after an illness or surgery. Some patients may need the services of all three disciplines, while others may only need one or two. Most patients will need occupational and physical therapy and will be required by most insurance companies to receive therapy five days per week.

Earlier this year, SNMH made the decision to close their Transitional Care Unit (TCU), a 17-bed licensed skilled nursing facility, effective February 1. Auburn faith dosed their TLC unit about a decade ago. Like these hospitals, the financial model for Rincon del Rio cannot provide for the intensive and varied professional staffing needed for short-term skilled nursing needs. Rincon del Rio cannot maintain a facility when none of the residents require skilled nursing care-which will occur many weeks out of the year. For these reasons, Rincon will contract out with a skilled nursing/rehab establishment to provide the utmost care. This care is covered for our residents by Medicare.

Nursing Home Facilities are for long-term care of patients who are not sick enough to need hospital care but are not able to remain at home. Residents have chronic irreversible

and disabling disorders, and medical and nursing care is minimal. The purpose of Nursing Homes is to help conserve expensive hospital facilities for the acutely ill. Medicare does not pay for Nursing Home care, which is private pay or falls to Medicaid or Medical.

If an individual's condition cannot be improved or maintained through skilled nursing care, or the condition ceases to improve despite the treatments provided, the person typically only qualifies for custodial care. In this country, there is much focus on post-acute care, and the length of stay of most patients in a skilled nursing facility is now less than 90 days. In contrast to skilled nursing, custodial care is often needed for much longer periods of time, months or even years.

Nursing homes are considered custodial care and staff requirements are 3.2 nursing hours per patient daily. If the facility has from 1-59 beds, there must be an LVN present 24 hours a day, but the rest of the staffing can be aids. There is very limited therapeutic care. Medicare pays for only one physician visit per month.

Originating from a focus on illness and dependency, daily life in nursing homes is organized around predetermined schedules and to-do lists for the staff, who may not know the resident well. Because the emphasis is primarily on quality of care and not on quality of life, the resident's days lack choice, meaning, and purpose. A Nursing Home is a place you go when you lose your decision making, your independence. You wait to die. I would think that towards the end of your life, you'd much rather be spending time with close friends and relatives, rather than awakening each day to the dying of strangers all around you-waiting your turn.

Today's "traditional" **nursing homes** were created about 50 years ago as "homes for the aged." Architecturally, many were built like hospitals and organized to be similarly run. As a result, nursing homes became regimented and task- and schedule-driven. This is not compatible with the Rincon del Rio mission statement of Abundant Living - Successful Aging.

There is a disjunction between episodic acute care and long-term care. The picture is further muddled in some cases where the patient begins the skilled nursing home stay for rehabilitation but transitions to a long-term resident-the same person under very different clinical circumstances and level of care operated by two very different sets of payment rules and Medicare incentives.

If a potential resident and their family wants life prolonged no matter the cost and discomfort-not just financially, but emotionally, mentally, and spiritually-Rincon del Rio is not a good fit.

Forced feeding tubes, ventilators, and other heroic measures to prolong life are obviously an individual's choice, but such care is not provided on site as it is, in our opinion, neither abundant living nor successful aging. Our policy **would be made very clear to any potential resident and their family and detailed in the resident's legal contract as governed by the State of California.**

Assisted Living is housing for the elderly or disabled that provides nursing care, housekeeping, and prepared meals as needed. It is considered custodial or long-term care. It is private pay.

Assisted Living facilities are considered custodial care, and usually the residents are not as frail as those in custodial-care nursing homes. The staffing may include an on-site doctor,

nurses, physical therapists, activities director, transportation, social clubs, and much more. The emphasis is on quality of life. Independence and choice for the residents are the top objectives.

After a stay in a skilled nursing unit, if the doctor determines progress towards independence has stopped, Rincon del Rio residents return to our community where they move to assisted living, (with the hope that in time they can live independently once again), or choose home-based services with an emphasis on palliative care, or accept hospice. They can also transfer to an outside Nursing Home and receive their recompense percentage.

Of course, this skilled nursing/nursing home policy will be fully disclosed to any potential resident.

People who have come to a nursing home via living independently at their private residence who do not qualify for transfer to an assisted living facility (regulated by the State of California Department of Social Services) or hospice upon discharge, will most likely be confined to the Nursing Home with payments covered privately or by Medicaid.

Seniors are increasingly opting to choose more home-like alternatives including assisted living, continuing care retirement communities (CCRC), and rapidly expanding Medicaid-financed home and community- based services (HCBS). Rincon Del Rio residents benefit from having that model perfected to success without the hassle offinding and enrolling in a program.

Skilled nursing facilities and nursing homes are changing profiles and Rincon del Rio is adapting for the future.