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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (*Division 2 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 10. Continuing Care Contracts [1770 - 1793.91] (*Chapter 10 repealed and added by Stats. 1990, Ch. 875, Sec. 2.*)

ARTICLE 7. Offenses and Penalties [1793.5 - 1793.31] (*Article 7 added by Stats. 1990, Ch. 875, Sec. 2.*)

1793.5. (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.
(Amended by Stats. 2000, Ch. 820, Sec. 58. Effective January 1, 2001.)

1793.6. (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.

(Amended by Stats. 2000, Ch. 820, Sec. 59. Effective January 1, 2001.)

1793.7. 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 care retirement community premises.

(Amended by Stats. 2000, Ch. 820, Sec. 60. Effective January 1, 2001.)

1793.8. 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.

(Amended by Stats. 2000, Ch. 820, Sec. 61. Effective January 1, 2001.)

1793.9. (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.

(Amended by Stats. 2002, Ch. 553, Sec. 5. Effective January 1, 2003.)

1793.11. (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.

(Amended by Stats. 2000, Ch. 820, Sec. 63. Effective January 1, 2001.)

1793.13. (a) The department may require a provider to submit a financial plan and periodic financial reports if any of the following apply:

(1) A provider fails to submit to the department an audited 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.

(3) The department receives notice from a provider within two weeks after the end of a calendar month in which the circumstances described in subparagraph (A) and one of the circumstances described in subparagraph (B) occurred and were continuing at the end of that month. The provider shall notify the department within the specified timeframe above if it meets the circumstances outlined in this paragraph.

(A) Overall average occupancy of all facility levels of care is below 80 percent at a facility. For purposes of this subparagraph, "all facility levels of care" includes, if applicable, independent living, assisted living, and skilled nursing. Overall average occupancy shall be calculated as the average for all units over the preceding two months, excluding units that were not on the market or already reserved. Overall average occupancy shall not apply to newly opened continuing care retirement communities for a period of 12 months from the date of opening. A provider shall not keep a unit off the market to avoid repaying all or a portion of the entrance fee of a repayable contract.

(B) (i) The provider fails to maintain the minimum reserve required pursuant to Section 1792.3.

(ii) The provider fails to meet one or more of its debt covenants from a third-party lender, a bond issue, or a third-party lender and a bond issue.

(iii) The provider has a net operating loss for a period of three consecutive months.

(b) (1) 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 remedy the problems and deficiencies identified by the department. If the provider determines that the plan contains trade secret information protected under the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code), the provider shall submit at the same time a separate version of the plan with the trade secret information redacted. The provider shall identify to the department the portions of the plan that it asserts are trade secrets.

(2) If a financial plan and periodic financial reports are required by the department, a provider shall submit periodic reports to the department. Periodic reports shall explain the provider's progress toward remedying the problems and deficiencies identified by the department. The department may require reporting at intervals that the department deems necessary.

(c) The department shall approve or disapprove the plan and redacted form of the plan within 30 calendar days of its receipt. If the plan is approved and the redacted form of the plan is not, the provider will be given an opportunity to resubmit the redacted form of

the plan for the department's approval.

(d) If the plan is approved, the provider shall immediately implement the plan. Within 10 calendar days of approval, the provider shall distribute a copy of the plan or the approved redacted form of the plan to the facility's resident council or association. If the plan is approved and the redacted form of the plan is not, the provider shall distribute a copy of the redacted form of the plan to the facility's resident council or association within 10 calendar days of approval. All periodic reports required by this section shall also be distributed to the facility's resident council or association within 10 calendar days of submission to the department.

(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 that, subject to the approval of the department, will reasonably ensure that the provider will meet its responsibilities under the law. A corrective action plan or a plan for reorganization shall be shared with the facility's resident council, resident association, or resident council and resident association within 10 calendar days of submitting notification to the department.

(f) (1) The provider shall share its approved financial plan, the approved redacted form of the plan, or any revised version of the financial plan, and any subsequent periodic report with a prospective or incoming resident no less than 60 calendar days before entering into a continuing care contract until the time the provider has corrected the problems and deficiencies identified by the department.

(2) If a prospective or incoming resident has an urgent need for placement that requires occupancy less than 60 days from their decision to go forward with a contract, the resident shall sign a declaration indicating all of the following:

(A) There is an urgent need for the resident to obtain a placement at the community.

(B) The resident has received a copy of the community's financial plan, or redacted or revised financial plan.

(C) The copy of the financial plan, or redacted or revised financial plan was provided within a reasonable time of the provider becoming aware that a placement would be required in less than 60 days.

(D) The resident waives the right to receive the financial plan, or redacted or revised financial plan, 60 days in advance of their executing a continuing care contract.

The paragraph indicating that the resident received the financial plan, or redacted or revised financial plan, shall be initialed by the resident. The declaration shall be kept in the resident's file.

(g) If the provider fails to correct deficiencies by the expiration of the financial plan, the department may take further actions consistent with this chapter.

(Amended by Stats. 2022, Ch. 538, Sec. 2. (SB 707) Effective January 1, 2023.)

1793.15. (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.

(Amended by Stats. 2000, Ch. 820, Sec. 65. Effective January 1, 2001.)

1793.17. (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.

(Amended by Stats. 2000, Ch. 820, Sec. 66. Effective January 1, 2001.)

1793.19. 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.

(Amended by Stats. 2000, Ch. 820, Sec. 67. Effective January 1, 2001.)

1793.21. 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.
- (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.

(Amended by Stats. 2000, Ch. 820, Sec. 68. Effective January 1, 2001.)

1793.23. (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.

(Amended by Stats. 2011, Ch. 32, Sec. 14. (AB 106) Effective June 29, 2011. Operative January 1, 2012, by Sec. 73 of Stats. 2011, Ch. 32.)

1793.25. (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.

(Amended by Stats. 2000, Ch. 820, Sec. 70. Effective January 1, 2001.)

1793.27. (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.

(Amended by Stats. 2000, Ch. 820, Sec. 71. Effective January 1, 2001.)

1793.29. 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.

(Amended by Stats. 2000, Ch. 820, Sec. 72. Effective January 1, 2001.)

1793.31. (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.

(Amended by Stats. 1995, Ch. 920, Sec. 64. Effective January 1, 1996.)