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AB-713 Continuing care retirement facilities: transfers of residents. (2017-2018)

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Assembly Bill No. 713

CHAPTER 613

An act to amend Section 1788 of the Health and Safety Code, relating to continuing care retirement facilities.

[Approved by Governor October 09, 2017. Filed with Secretary of State October 09, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 713, Chu. Continuing care retirement facilities: transfers of residents.

Existing law requires a continuing care retirement facility, as defined, to possess a certificate of authority issued by the State Department of Social Services before it can enter into a continuing care contract, as defined, with a resident. Existing law requires that a continuing care contract be in writing and contain specified information. Existing law authorizes a continuing care retirement community to transfer a resident under certain circumstances, including when the resident develops a physical or mental condition that endangers the health, safety, or well-being of the resident or another person. Prior to any transfer under those provisions, existing law requires the continuing care retirement community to satisfy certain requirements, including, but not limited to, involving the resident and the resident's responsible person in the assessment process that forms the basis for the transfer and providing an explanation of the assessment process. If assessment tools are used in making that determination, existing law authorizes the resident or resident's responsible person to request copies of the completed assessment. Existing law authorizes the resident or the resident's responsible person to dispute a transfer decision, and existing law requires a timely review of transfer disputes by the Continuing Care Contracts Branch of the department, as prescribed. Existing law requires any transfer decision of the branch of the department to be in writing.

The bill would authorize a continuing care retirement community to transfer a resident if he or she develops a physical or mental condition that is detrimental to the health, safety, or well-being of the resident or another person, without being a danger. With regard to the assessment process, this bill would require a continuing care retirement community to use specified assessment tools during that process, and would require that a provider share copies of the completed assessment with the resident or the resident's responsible person. For disputed transfer decisions, the bill would require the provider to 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, and to make copies of the report to share with the resident or the resident's responsible person. In a transfer dispute, the bill would require the branch of the department to provide a description of the steps a provider took and the factors a provider considered in deciding to transfer a resident, as prescribed. The bill would require the branch of the department, in its decision, to also specify whether the transfer is appropriate and necessary.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1788 of the Health and Safety Code is amended to read:

1788. (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 or the resident's responsible person.

(C) The resident has the right to review and dispute 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, any duly 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)"