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SB-707 Continuing care contracts. (2021-2022)

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Senate Bill No. 707

CHAPTER 538

An act to amend Sections 1778 and 1793.13 of the Health and Safety Code, relating to continuing care contracts, and making an appropriation therefor.

[Approved by Governor September 25, 2022. Filed with Secretary of State September 25, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 707, Cortese. Continuing care contracts.

Existing law regulates continuing care contracts and imposes certain reporting and reserve requirements on continuing care communities. Existing law establishes the Continuing Care Provider Fee Fund, which consists of specified fees from continuing care providers and which is continuously appropriated to the State Department of Social Services to oversee the continuing care provider program. Existing law requires the department to adjust the fees to reduce the amounts collected when the balance of the fund is projected to exceed \$500,000 for the next budget year.

This bill would rename the fund as the CCRC Oversight Fund. The bill would also remove the requirement that the department reduce the amounts collected when the fund is projected to reach \$500,000 and would, instead, require the department to, as needed, adjust the fees on continuing care providers to ensure that the balance in the fund is adequate to fund the reasonable regulatory costs of the program and does not exceed an amount adequate to fund those costs. By authorizing additional amounts to be deposited into a continuously appropriated fund, the bill would make an appropriation. The bill would require a link to the approved budget for the Continuing Care Contracts Section to be posted on the department's internet website.

Existing law authorizes the department to require a continuous care provider to submit a financial plan in specified circumstances, including when 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. Existing law requires the plan to explain how and when the provider will rectify the problems and deficiencies identified by the department.

This bill would authorize the department to require a provider to submit a financial plan and periodic financial reports in the above circumstances, and if the department receives notice with specified information from a provider within 2 weeks after the end of a calendar month. The bill would require the financial plan and the periodic financial reports to be distributed as specified, including to the facility's resident council or association within 10 calendar days of submission to the department. The bill would permit a provider to submit a separate version of the financial plan with trade secret information redacted and would require the department to approve or disapprove of the plan and the redacted version of the plan. The bill would require the approved financial plan, the approved redacted form of the plan, any revisions, and any subsequent periodic report to be shared 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, except when a prospective or incoming resident has an urgent need for placement and the resident completes a declaration, as specified.

Existing law defines a repayable contract as 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.

This bill would prohibit a provider from keeping a unit off market to avoid repaying all or a portion of the entrance fee of a repayable contract.

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

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

SECTION 1. Section 1778 of the Health and Safety Code is amended to read:

1778. (a) There is hereby created in the State Treasury a fund that shall be known as the CCRC Oversight Fund. The fund shall consist of fees received by the department pursuant to this chapter. Notwithstanding Section 13340 of the Government Code, the CCRC Oversight 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, including, but not limited to, the following:

(A) A Continuing Care Contracts Program Manager at a level consistent with other management classifications that direct a regulatory program with statewide impact. The position shall require 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.

(B) A 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.

(C) A financial analyst with working knowledge of generally accepted accounting principles and auditing standards.

(D) Other appropriate analytical and technical support positions.

(2) Contracts with technically qualified persons, including, but not 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) As needed, the department shall adjust the calculations for the application fees under Section 1779.2 and annual fees under Section 1791 to ensure that the balance in the CCRC Oversight Fund is adequate to fund the reasonable regulatory costs of the program, as specified in subdivision (b). If the balance in the CCRC Oversight Fund exceeds an amount adequate to fund the reasonable regulatory costs of the program, as specified in subdivision (b), 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. A link to the approved budget for the Continuing Care Contracts Section shall be posted on the department's internet website.

(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.

SEC. 2. Section 1793.13 of the Health and Safety Code is amended to read:

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.