

1 ERIC M. ACKER (BAR NO. 135805)
Email: EAcke@mofo.com
2 LINDA L. LANE (BAR NO. 211206)
Email: LLane@mofo.com
3 MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
4 San Diego, California 92130-2040
Telephone: 858.720.5100
5 Facsimile: 858.720.5125

6 Attorneys for Defendants
CC-LA JOLLA, INC., CCW-LA JOLLA, L.L.C.,
7 CC-DEVELOPMENT GROUP, INC.,
CLASSIC RESIDENCE MANAGEMENT
8 LIMITED PARTNERSHIP

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO

11 DONALD R. SHORT, JAMES F. GLEASON,
12 CASEY MEEHAN, MARILYN SHORT,
13 PATTY WESTERVELT, AND DOTTIE
YELLE, individually, and on behalf of all others
14 similarly situated,

15 Plaintiff,

16 v.

17 CC-LA JOLLA, Inc., a Delaware Corporation,
18 CC-LA JOLLA, L.L.C., a Delaware limited
liability company, CC-DEVELOPMENT
19 GROUP, INC., CLASSIC RESIDENCE
MANAGEMENT LIMITED PARTNERSHIP, an
20 Illinois Limited Partnership, and DOES 1 to 110,
inclusive,

21 Defendants.

Case No. GIC877707

**DECLARATION OF LINDA L.
LANE IN SUPPORT OF
DEFENDANTS' REPLY IN
SUPPORT OF REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF DEMURRER AND MOTION
TO STRIKE PLAINTIFFS'
SECOND AMENDED
COMPLAINT**

Judge: Hon. Yuri Hofmann
Dept: C-60

Date Action Filed: December 29, 2006
Trial Date: Not yet set

COPY

1 I, Linda L. Lane, declare as follows:

2 1. I am an associate at the law firm of Morrison & Foerster LLP, attorneys of record in this
3 action for Defendants CC-La Jolla Inc., CCW-La Jolla LLC, CC-Development Group, Inc. and
4 Classic Residence Management LP. Unless otherwise indicated, I have personal knowledge of the
5 matters set forth below. If called as a witness, I could and would testify competently as follows.

6 2. Attached hereto as Exhibit A is a true and correct copy of a declaration of Lisa Hampton,
7 Research Director at Legislative Research, Inc., authenticating the legislative history attached as
8 Exhibits I – L to the Defendants' Request for Judicial Notice In Support of Demurrer and Motion to
9 Strike Plaintiffs' Second Amended Class Action Complaint.

10 I declare under the penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct and that this Declaration was executed this 10th day of August, 2007, at
12 San Diego, California.

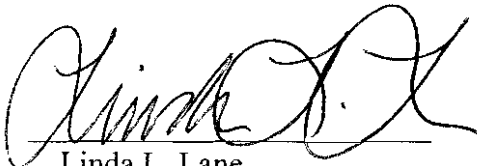
13
14 
15 Linda L. Lane
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

Authentication of the Records and Annotated Index

Legislative History Research Report¹ Regarding:

CALIFORNIA HEALTH & SAFETY CODE
§ 1771.8 (c) – (e), (i) – (p), *Formerly* § 1771.9 (b) – (j)
As Added By Statutes of 1998, Chapter 227 § 1, AB 1255
AND
CALIFORNIA HEALTH & SAFETY CODE
§ 1771.8 (f), 1st Sentence, *Formerly* § 1771.8 (e)
As Amended By Statutes of 1999, Chapter 949 § 3, SB 1082


I. Lisa Hampton, declare that this report includes:

1. The accompanying exhibits indexed below are legislative history documents pertaining to Stats. 1998, c. 227, AB 1255 and Stats. 1999, c. 949, SB 1082:

Unitemized materials by source²	1
Assembly Bill 1255	
Department of Social Services agency analysis	
(Source: State Archives: Office of Senate Floor Analyses)	
Fiscal committee analysis	6
Assembly Bill 827	
Department of Finance ³	
(Source: State Archives: Office of Senate Floor Analyses)	
Senate policy committee analysis⁴	11
Senate Bill 1082	
Senate Committee on Health & Human Services	
(Source: State Archives: Senate Committee on Health & Human Services)	
Unitemized materials by source⁵	17
Assembly Bill 1255	
Memorandum and Draft Amendments	
(Source: State Archives: Senate Committee on Health & Human Services)	

2. These documents were obtained by the staff of Legislative Research, Incorporated and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, for ease of reference, paging and relevant identification have been inserted.
3. Legislative Research, Incorporated was established in 1983 (formerly Legislative Research Institute), and is a firm which specializes in the historical research surrounding the adoption, amendment and/or repeal of California statutes, regulations and constitutional provisions pursuant to California Code of Civil Procedure § 1859 which states in pertinent part: "In the construction of a statute the intention of the Legislature ... is to be pursued, if possible" Legislative Research, Incorporated has been cited by name as the source of records relied upon by the court in *Redlands Community Hospital v. New England Mutual Life Insurance Co*, 23 Cal. App.4th 899 at 906 (1994).
4. I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed August 9, 2007, in Sacramento, California.



Lisa Hampton, Research Director
Legislative Research, Incorporated

Endnotes

1. **GENERAL AUTHORITY FOR THE USE OF LEGISLATIVE INTENT RESEARCH MATERIALS:** "A wide variety of factors may illuminate legislative design, such as context, object in view, evils to be remedied, history of the times, and of legislation upon the same subject, public policy, and contemporaneous construction." People v. White (1978) 77 Cal. App. 3d Supp. 17. "In the present instances both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose." California Manufacturers Association v. Public Utilities Commission (1979) 24 Cal. 3d 836, 844 (Emphasis added). In general, for statutory authority on the use of "extrinsic" aids for determining legislative intent, see Evidence Code Section 452 (c) ("official acts" of the Legislature) and Code of Civil Procedure Section 1859 (the intention of the Legislature is to be pursued, if possible). For obtaining judicial notice of specified matters, see Evidence 450 et seq and Rules of Court, Rule 323 (b). See also, Government Code Sections 9075 and 9080 regarding access to and the use of legislative records (Senate Bill 1507, Secs. 1 & 2, legislation originally proposed by Legislative Research, Inc. Carolina Rose.)

2. **UNITEMIZED CORRESPONDENCE/MATERIALS:** See Woodman v. Superior Court (1987) 196 Cal. App. 3d 407, 414 for admissibility of statements by proponents and opponents. See Kern v. County of Imperial (1990) 226 Cal. App. 3d 391, 401 for statements of sponsors. See also Department of Water and Power City of Los Angeles v. State Energy Resources Conservation and Development Commission (1991) 2 Cal. App. 4th 206, 223, for admission of a letter to an author which resulted in an amendment. [NOTE: This last cite involves records supplied by LRI.]. See Reimel v. Alcoholic Beverage Control Appeals Board (1967) 254 Cal. App. 2d 340, 345 for admissibility of departmental analyses. See also Gov. Code Sections 9075 and 9080 for committee file materials.

3. **FISCAL COMMITTEE ANALYSIS: Department of Finance:** See Reimel v. Alcoholic Beverage Control Appeals Board (1967) 254 Cal. App. 2d 340, 345 for admissibility of departmental analyses.

4. **POLICY COMMITTEE ANALYSES:** Such records are among those most commonly recognized by the courts as evidence of legislative intent along with bill versions. See, for example, Hutnick v. U.S. Fidelity and Guaranty Company (1988) 47 Cal. 3d 456, 465 (footnote 7); Reimel v. Alcoholic Beverage Control Appeals Board (1967) 254 Cal. App. 2d 340, 345; In re Marriage of Briaden (1978) 80 Cal. App. 3d 380, 391.

5. **UNITEMIZED CORRESPONDENCE/MATERIALS:** See Woodman v. Superior Court (1987) 196 Cal. App. 3d 407, 414 for admissibility of statements by proponents and opponents. See Kern v. County of Imperial (1990) 226 Cal. App. 3d 391, 401 for statements of sponsors. See also Department of Water and Power City of Los Angeles v. State Energy Resources Conservation and Development Commission (1991) 2 Cal. App. 4th 206, 223, for admission of a letter to an author which resulted in an amendment. [NOTE: This last cite involves records supplied by LRI.]. See Reimel v. Alcoholic Beverage Control Appeals Board (1967) 254 Cal. App. 2d 340, 345 for admissibility of departmental analyses. See also Gov. Code Sections 9075 and 9080 for committee file materials.

DEPARTMENT: Social Services	AUTHOR: Davis	BILL NUMBER: AB 1255
HWA DEPTS. cc'd:	SPONSOR:	VERSION: Original
ASSIGNMENT: X A B C OTHER		RELATED BILLS:
SUBJECT: Continuing Care Retirement Communities		

SUMMARY

This bill would require nonprofit providers of continuing care to include at least one resident from each of its continuing care retirement communities (CCRC) on its board of directors.

POSITION AND SUPPORTING ARGUMENTS


OPPOSE UNLESS AMENDED. The Department is suggesting amendments to this bill because the bill's language is inconsistent with the current statutes governing continuing care retirement communities. This bill would use language that was replaced by legislation effective January 1, 1996. The current statutes use the term continuing care retirement community instead of the word facility. In addition, the bill's penalty provision should delete the reference to "permit" as the bill will only apply to providers who are operating a CCRC. The bill should also allow residents who do not belong to an association to participate in selecting the resident board member.

LEGISLATIVE HISTORY

None.

PROGRAM BACKGROUND

The Continuing Care Contracts Branch, Community Care Licensing Division, is responsible for evaluating and monitoring the performance and financial strength of providers authorized to enter into continuing care contracts with elderly persons. The office evaluates the financial and market feasibility of proposed projects; monitors marketing and construction activities; and controls the escrow, release and use of resident monies used to fund development and start-up costs. The Branch is responsible for the annual review of audited financial statements and reserve calculations for all operating facilities to assess whether they have the financial

OTHER DEPARTMENTS WHICH MAY BE AFFECTED		GOVERNOR'S APPT	
DEPARTMENT	DIRECTOR POSITION	AGENCY SECRETARY POSITION	STATE MANDATE
___ S	___ O	___ S	___ O
___ SA	<u>X</u> OUA (OA)	___ SA	<u>X</u> OUA (OA)
___ N	___ NP	___ N	___ NP
___ NA	___ NAR (N/C)	___ NA	___ NAR (N/C)
BY:	DATE:	BY:	DATE:
		Original Signed On	
		MAY 01 1997	
		GOVERNOR'S OFFICE USE	
		POSITION APPROVED ()	
		POSITION DISAPPROVED ()	
		POSITION NOTED ()	
		BY: DATE:	

ability to meet their continuing care contract obligations. The Branch may intervene at distressed facilities by obtaining a court order appointing an administrator selected by the Branch to replace management. The Branch also evaluates applicants' and providers' compliance with statutory requirements; monitors such compliance on an ongoing basis; and enforces the CCRC statutes by issuing application denials, administrative fines, and suspension, revocation, or abatement orders.

SPECIFIC FINDINGS

☐ Requires Regulatory Action

☐ Requires Legislative Reports

☐ Requires/Impacts Commissions, Boards, etc.

☐ Urgency Clause

Currently, the Branch has little oversight authority regarding provider-resident relations apart from the contractual care obligation. Accordingly, the level of participation by residents in facility management has been left up to the providers who are, in turn, constrained by the market, i.e., the level of interest that prospective residents have in residing at a provider's facility. Residents desiring to be actively involved in the governance of their CCRC gravitate toward facilities which have established policies and programs for such participation. The proposed bill would alter this reliance on the market by requiring direct participation by a resident representative in the management of a provider.

Current law gives CCRC residents an opportunity to participate in a resident council and make recommendations to management regarding resident issues which impact their quality of life. In addition, current law requires CCRC providers to promote information sharing between management and residents, and to establish procedures which give residents access to the board of directors. Since this provision only became effective on January 1, 1996, its success in providing residents with an influence on management decisions is not yet certain.

The Department has suggested amendments to address its concerns related to the language used in this bill. The term "facility" should be replaced with "continuing care retirement community". Both "facility" and "continuing care retirement community" are defined in the Health and Safety Code (H&SC) section 1771 and the former does not refer to CCRCs exclusively. By changing "facility" to "continuing care retirement community" the language of this bill will be consistent with current CCRC statutes.

The penalty provision in paragraph (b) of this bill should delete the reference to "permit". The bill requires a resident representative for each operating CCRC, i.e., CCRCs for which the provider has been issued either a provisional certificate of authority or final certificate of authority. Applicants holding only a permit to sell deposit subscriptions are not authorized to operate a CCRC and the proposed statute would not apply to them.

The term "association" should be deleted from paragraph (a) as not all CCRCs have residents' associations and, in any event, selection of the residents' representative should not be limited to residents who belong to an association. By deleting the term "association" all residents would be entitled to participate in the selection of their representative.

FISCAL IMPACT (DOLLARS IN THOUSANDS)

	Current FY	Budget FY	Annual Ongoing FY
G.F.	\$0	\$0	\$0
Other*	<\$5,000	<\$5,000	<\$5,000
Total	\$	\$	\$

PYs

* The provider fee fund.

The increase in staff workload is not expected to be significant. The extreme sanctions which may be imposed on providers who violate the statute should both keep violations to a minimum and, upon action taken by the Branch, result in quick resolution. Total cost to the Branch in staff time and resources should not be more than \$5,000 per FY.

PROS (PROGRAM/FISCAL)

This bill would give CCRC residents a voice in the management of the provider operating their CCRC. As a result, the resident director's perspective would be expressed on every matter considered by each provider's governing board of directors.

CONS (PROGRAM/FISCAL)

(1) Every nonprofit provider will amend its bylaws to provide for a resident member and, almost certainly, to allow additional directors in order to minimize the resident board member's impact. If a provider's board now consists of 5 persons, the by-laws could be amended to allow, for example, 15 directors which would effectively reduce the resident director's vote to 1 out of 15. Moreover, corporate entities would have several other legitimate methods to minimize the intrusiveness of resident director but not without some burden to the efficiency of the entity.

(2) In addition, several corporate entities are designated as a "provider" by virtue of the entities' control over the "provider" operating a CCRC. For example, a "parent" non-profit corporation may be the sole corporate member of 3 subsidiary non-profit corporations that each operate a CCRC. This bill would require that a resident representative sit on the board of each corporation operating a CCRC and that a resident representative from each of the three CCRCs sit on the board of the parent entity. Again, adding multiple resident directors (who will have different constituencies) to the parent's board will be disruptive to the management of the providers.

(3) Requiring resident directors on the providers' board represents a reversal of the previous efforts to separate residents from the responsibility for operating a CCRC. Existing law specifically prohibits homeowners' associations and cooperatives from being a "provider." The notion behind these provisions was that the accountability for operating a CCRC in compliance with the terms of the residents' contracts, as well as the CCRC statutes, should not rest on the shoulders of the residents.

(4) The specific sanctions for failure to comply with this bill are suspension or revocation the provider's provisional certificate of authority or final certificate of authority. These sanctions would rarely be invoked, however, as the residents (particularly in CCRCs operated by non-profit entities) are the first to be hurt by the loss of revenues occasioned by revocation or suspension. Accordingly, the threat of revocation or suspension is generally not effective. The language of the bill, however, does tie directly into existing law which authorizes the department to assess administrative fines not to exceed \$1,000 per violation.

PROPONENTS

CALCRA

OPPONENTS

Nonprofit providers of continuing care.

DEPARTMENT CONTACT/TELEPHONE

Jackie Rodriguez 657-2623

This page was left intentionally blank.

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: April 17, 1995
POSITION: Oppose unless amended

BILL NUMBER: AB 827
AUTHOR: J. Speier

BILL SUMMARY

This bill would make numerous changes to existing law regarding continuing care contracts. The changes proposed by this bill are designed to enhance protections for clients of continuing care providers and to "clean up" existing statutes. This bill would also make an appropriation from the special fund to fund the costs of two positions in the Department of Social Services (DSS).


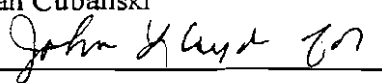
FISCAL SUMMARY

The bill would authorize the expenditure of funds for up to six positions to administer this program. Four of these positions currently exist. Accordingly, this bill would result in the addition of two new positions. These positions would be funded from the Continuing Care Provider Fee Fund which is a continuously appropriated special fund. We estimate costs for the two positions would approximate \$120,000 annually.

The bill would also authorize DSS to assess penalties for specified violations of the provisions of this bill. We assume penalty revenues, if any, would be minor.

COMMENTS

We have no fiscal concerns with this bill and are not opposed to the additional positions. However, the bill would establish specific classifications. In our judgement, the positions should be subject to approval of the Department of Finance and the level of the classifications should be determined by the Department of Personnel Administration. Accordingly, we are opposed unless the bill is amended to delete the reference to specific classification levels.

Analyst/Principal (0533) B. Cohen	Date	Program Budget Manager Stan Cubanski	Date
	5/12		5/12
Department Deputy Director			Date

Governor's Office:	By	Date:	Position Noted _____
			Position Approved _____
			Position Disapproved _____
BILL ANALYSIS			Form DE-43 (Rev 03/95 Buff)

HW:AB827.532 05/11/95 8:01 PM

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

J. Speier

April 17, 1995

AB 827

ANALYSIS**A. Programmatic Analysis**

Under current law, the Department of Social Services licenses and regulates providers of continuing care for the elderly. Continuing Care Contracts are arrangements between elderly clients and private companies for long term care in a residential community. Typically, the client will make an upfront payment (typically \$150,000-\$200,000) then make monthly payments to the provider. The provider in turn agrees to provide shelter and care for life to the client in a retirement community setting. If the client dies or moves out of the community, some portion of the upfront payment is refunded. Currently, there are 66 such providers in California.

DSS indicates that the statutes governing these types of contracts need some clean up as many of the provisions are unclear, outdated or cumbersome. This bill proposes numerous changes to current law which are intended to:

- Enhance consumer protections for potential clients and current residents of continuing care retirement communities;
- Strengthen existing regulatory standards that are intended to ensure the fiscal viability of providers;
- Clarify the DSS' authority to ensure provider performance on contracts, and;
- Clear up ambiguities in current law and delete provisions that are inconsistent with other statutes.

The DSS indicates that they have been working with the author's office on this bill and indicates that it agrees with the policy direction of the bill. We have no fiscal concerns with the bill and would defer to the Health and Welfare Agency on the bill's policy implications. However, we object to the provisions of the bill that specify the classifications of the staff resources proposed for the program. In our judgement, the positions should be subject to approval of the Department of Finance and the level of the classifications should be determined by the Department of Personnel Administration. Accordingly, we are opposed unless the bill is amended to delete the reference to specific classification levels.

B. Fiscal Analysis

The bill would authorize two additional staff for DSS to administer the program. The fund source for the program, the Continuing Care Provider Fee Fund is continuously appropriated. Accordingly, by authorizing the two additional positions in statute, the bill would make an

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

J. Speier

April 17, 1995

AB 827

B. Fiscal Analysis (continued)

appropriation. We estimate the cost of the two additional positions would approximate \$120,000 annually. DSS indicates the two positions would be required to monitor the fiscal viability of providers and to administer the enhanced regulatory provisions proposed by this bill. DSS has not provided any workload justification for these positions. However, we assume the DSS' estimate is reasonable. We note that the current balance and level of revenues to the Continuing Care Provider Fee Fund would accommodate the costs of the two additional positions without the need for any increase in fees.

The bill would also allow DSS to issue citations and assess penalties for specified violations of the provisions of this bill. We do not have an estimate of the revenues resulting from those penalties. However, based upon the number of providers and the amount of the penalties, we assume that penalty revenues, if any, would be minor.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)								Fund Code
	LA	(Dollars in Thousands)								
	CO	PROP								
	RV	98	FC	1994-1995	FC	1995-1996	FC	1996-1997		
5180 Social Services	SO	No	--	A	\$60	A	\$120	163		
1600 Misc. Penalties	RV	No	----- No/Minor Fiscal Impact -----						163	

Fund Code: Title

163 Continuing Care Provider Fee Fund

Suggested Amendments
AB 827 (As amended Original)

On Page 26, delete lines 1 through 9 inclusive and replace with

"(1) Program personnel costs, to include but not be limited to six staff positions as approved by the Department of Finance and the Department of Personnel Administration."

This page was left intentionally blank.

**SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ANALYSIS**

Senator Martha M. Escutia, Chair

BILL NO: SB 1082
AUTHOR: Ortiz
AMENDED: April 15, 1999
HEARING DATE: April 21, 1999
FISCAL: Appropriations

CONSULTANT:
Umino

SENATE HEALTH & HUMAN
SERVICES COMMITTEE
SAVE
DO NOT REMOVE
FROM FILE

S
B

1
0
8
2

SUBJECT

Continuing Care Retirement Communities

SUMMARY

This bill seeks to protect the residents of continuing care retirement communities (CCRCs) by: (1) providing residents with access to information, (2) improving state oversight, and (3) requiring CCRCs to institute specified fiscal management and reporting practices.

ABSTRACT

Existing law:

1. Requires any provider who promises to care for an elderly person for life (or for more than one year) to first receive a license and certificate of authority from the California Department of Social Services (DSS).
2. Defines life care contract to include a promise by a provider to give care to a resident for the duration of his or her life (or for a term in excess of one year) in exchange for specified types of payment.
3. Specifies the supervision of life care contracts and state management of those contracts.
4. Creates in the State Treasury a fund known as the Continuing Care Provider Fee Fund, which consists of fees received by the CA Department of Social Services (DSS) from CCRCs.

Continued---

This bill:

1. Defines "audited financial statement."
2. Specifies a list of rights for residents of CCRCs and requires CCRC providers to give a copy of these rights to each resident at or before admission and to attach the rights to every contract.
3. Requires providers to: (a) give specified financial information to a resident council, (b) post and make available its annual report, as specified, (c) maintain and provided minutes of board of director's and other meetings, as specified, and (d) retain records and make them available for review, as specified.
4. Requires each provider to adopt and submit a plan, as specified, to protect CCRCs and residents from natural disasters.
5. Requires a provider to notify residents within 10 days of submitting an application for a certificate of authority to initiate construction or to close the sale or transfer of a CCRC and to notify residents of any other plans, as specified.
6. Requires each provider to maintain in segregated cash and marketable securities accounts the proceeds from entrance fees, as specified.

FISCAL IMPACT

Unknown

BACKGROUND AND DISCUSSION

The California Department of Social Services, Continuing Care Contracts Branch reports:

1. There are approximately 75 CCRCs in California with a population of approximately 20,000 residents.
2. DSS is responsible for approving, monitoring, and regulating continuing care providers.
3. Local Community Care Licensing District Offices continually monitor CCRCs to ensure compliance with state laws regarding physical plan accommodations, care and supervision, and quality of service.
4. The Branch evaluates, on an ongoing basis, the performance and financial strength of each provider to determine whether they have the ability to fulfill contractual obligations to residents.
5. Since 1939 when the state began monitoring CCRCs, there has been only one CCRC bankruptcy and closure in 1989.

Continued---

6. Within the last four or five years, approximately three CCRCs were required to improve their financial reserves in order to meet state law. All affected CCRCs complied and corrected their deficiencies.
7. At the present time, there are no CCRC financial problems identified.

Supporters argue:

1. Existing state law does not provide adequate financial protection for older and vulnerable residents of CCRCs.
2. Financial mismanagement by nonprofit CCRCs can put life savings at risk and cause monthly care fees to skyrocket, leaving residents with fixed incomes impoverished.
3. Seniors often use a significant portion of their life savings to secure the promise of guaranteed lifetime care that CCRCs offer. Fees vary widely, but typically exceed \$100,000 for one-time entry fees and \$2,000 to \$3,000 per month.
4. Because many CCRCs are run by nonprofit organizations, they do not have deep pockets to pay back residents if the CCRC should go bankrupt.
5. Some CCRCs cover financial mismanagement (e.g., excessive borrowing, insufficient cash flow, and inappropriate expansion) by raising monthly care fees, even if they promised not to.
6. The DSS oversees CCRCs, but does not have adequate staff to review applications for new CCRCs, much less review the operations of existing CCRCs.

Opponents argue:

1. The issues raised in this bill are not as simple as they appear and, in some cases, will have profound implications in the way that we deliver care to our elderly.
2. A new bill of rights that is separate from the rights for CCRCs in present law and independent from those in place for Skilled Nursing Facilities may have consequences.
3. This bill would have a dramatic impact on CCRCs, including: (a) increased cost (both entrance fees and monthly services) for the residents, (b) reduced access to CCRCs (because of the higher cost structure), and (c) increased number and accelerated decline of financially troubled CCRCs.
4. There are issues throughout this bill that deserve a detailed and reason discussion.

POSITIONS

Support: California Continuing Care Residents Association (sponsor)
 The following organizations supported this bill as introduced:
 American Federation of State, County and Municipal Employees
 Various individuals

Continued---

The following organizations signed an action alert to support a number of different bills, including this bill (as introduced):

<p>California Legislative Council for Older Americans Congress of California Seniors Older Women's League of California AFL-CIO Housing Investment Trust Western Center on Law and Poverty California Rural Legal Assistance Foundation Catholic Charities of the Diocese of Santa Rosa Christian Church Homes, Oakland Council of Churches of Santa Clara County Southern California Association of Non-profit Housing Non-Profit Housing Association of Northern California A Community of Friends, Los Angeles Mountain View/Los Altos Advocates for Affordable Housing ASIAN Incorporated, San Francisco Contra Costa County Homeless and Housing Service Providers Bonita House, Inc., Oakland Bowman Grove Community Service Planning, Davis Barbara Sanders Associates, Oakland Burbank Housing Development Corporation, Santa Rosa Cabrillo Economic Development Corporation, Saticoy Caduceus Outreach Services, San Francisco California Reinvestment Committee, San Francisco Central Valley Coalition For Affordable Housing, Merced Community Housing Development Council, Davis Conference of Social Justice Coordinators, Los Angeles Chinatown Community Development Center, San Francisco City of East Palo Alto, Rent Stabilization Program Honorable Dan Albert, Mayor of Monterey Chico Homeless Task Force City of Carlsbad Housing & Redevelopment Department City of Chico/ Homeless Task Force Civic Center Barrio Housing Corporation, Santa Ana Coachella Valley Housing Coalition, Indio Community Housing Development Corporation of Santa Rosa Community Economics, Inc., Oakland Corporation for Supportive Housing, Oakland East Bay Habitat for Humanity, Oakland East Oakland Community Development Corporation East Oakland Recovery Center East Palo Alto Rent Stabilization Program People's Self-Help Housing Corporation, San Luis Obispo Redwood City Planning and Redevelopment Public Interest Law Project, Oakland Public Law Center, Santa Ana Religious Witness with Homeless People, San Francisco Renee Franken and Associates, Inc., Sacramento Resources for Community Development, Berkeley Richard Olmsted Architects, San Francisco</p>	<p>E.M. Schaffran and Company, El Cerrito Ecumenical Assn for Housing, San Rafael Eden Housing, Inc., Hayward Episcopal Community Services, San Francisco EPA Can Do, East Palo Alto Esperanza Community Housing Corporation, Los Angeles Friends of the Homeless, Santa Rosa San Bernardino Fair Housing Council First Community Housing, San Jose Sonoma County Golden State Mobile Home Owners League Graphic Communications Union Retirees, Oakland Gubb & Barshay Attorneys, San Francisco Homes for Life Foundation, Los Angeles Housing for Independent People, Inc., San Jose Housing Authority of the City of Santa Barbara Housing Rights, Inc., Berkeley Housing Consortium of the East Bay, Berkeley Human Assistance Inc., Newport Beach ICF Consulting Group, San Rafael Jamboree Housing Corporation, Irvine Justice Office, Sisters Of St. Joseph, Los Angeles Katrina Bergen Associates, Oakland Lauterbach and Associates Architects, Camarillo Legal Aid Foundation of Santa Barbara MACSA, Inc., San Jose Marin City Community Development Corporation Marin Housing Council, San Rafael Marin Continuum of Housing and Services Mary Erickson Community Housing, San Juan Capistrano Mental Health Association of San Francisco Mercy Charities Housing California, San Francisco Mid Peninsula Housing Coalition, Redwood City Napa Valley Community Housing, Napa Nevada County Housing and Community Services Oakland Community Development Corporation Oakland Community Housing, Inc. Oakland Community Housing Management, Inc. Orange County Homeless Issues Task Force Pajara Valley Housing Corporation, Watsonville Peace and Justice Center of Southern California, Los Angeles Shelter Partnership, Inc., Los Angeles Sisters of the Holy Names, Los Gatos Sisters of St. Joseph of Carondelet, Los Angeles Sisters of Norte Dame de Namur of California, Saratoga Saint Joseph Health System, Orange Skid Row Housing Trust, Costa Mesa Sober Living Network, Santa Monica Socialization Thru Empowering Peers (STEP), San</p>
--	---

Continued---

Rubicon Programs, Inc., Richmond	Francisco
Rural California Housing Corporation, Sacramento	Society of St. Vincent de Paul, Council of L.A.
Saben Investments, Inc., Sepulveda	South County Housing, Gilroy
Sacramento Mutual Housing Association	Southern California Mutual Housing Association
SAMCO, San Jose	SRO Housing Corporation, Los Angeles
San Francisco Department of Public Health	Tenderloin Neighborhood Development Corporation, San Francisco
San Francisco Department of Public Health Housing Services	Tenderloin Housing Clinic, San Francisco
San Joaquin Fair Housing, Stockton	Thai Community Development Center, Los Angeles
San Joaquin County Housing Authority	The Public Interest Law Project
Santa Clara County Collaborative, San Jose	The Agora Group, Goleta
Santa Monica's for Renter's Rights	The Jordan Apartments/JSCO
Santa Monica Rent Control Board	Thomas Lauderbach
Self-Help Enterprises, Visalia	Transitional Living and Community Support, Sacramento
Senior Housing Action Collaborative, San Francisco	Venica Community Housing Corporation
Sentinel Fair Housing, Oakland	West Side Fair Housing Council, Los Angeles
Shelter, Inc., Concord	West Sacramento Housing Development Corporation
	West Contra Costa Conservation League, El Cerrito
	WNC & Associates, Inc., Costa Mesa

Oppose: California Association of Homes and Services for the Aging

-- END --

This page was left intentionally blank.

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
916-445-7210

DISTRICT OFFICE
1010 UNIVERSITY AVENUE
SUITE C-207
SAN DIEGO, CA 92103
(619) 294-7600

Assembly California Legislature

SUSAN A. DAVIS
ASSEMBLYWOMAN, SEVENTY-SIXTH DISTRICT

VICE CHAIR,
LABOR AND EMPLOYMENT

CONSUMER PROTECTION,
GOVERNMENTAL EFFICIENCY
AND ECONOMIC DEVELOPMENT
JUDICIARY
REVENUE AND TAXATION

MEMORANDUM

Date Submitted: 6/26 1997

From: Assemblywoman Susan A. Davis
To: Mr. Bion M. Gregory, Legislative Counsel
Subject: Legislative Counsel Action

- ☐ Draft bill as per attached
- ☒ Draft amendments as per attached
- ☐ Co-authors _____
- ☐ Opinion as per attached: _____ written _____ verbal
- ☒ If necessary, confer with JAMES TRAVEL (415) 424-4256

- ☐ Please confer with me or _____ of my staff before final drafting
- ☐ This is to authorize _____ to work with your office on the above legislation.
- ☐ This request is due by: Today - 6/26/97
- ☐ Above requested by phone
- ☐ Note: _____

Staff Contact: ROBERTA BATTLE

Phone: 445-7210

Serving the City of San Diego

Printed on Recycled Paper

June 26, 1997

AMENDMENTS TO AB 1255

(1) EVERY NONPROFIT PROVIDER SHALL HAVE AT LEAST ONE RESIDENT FROM EACH COMMUNITY ON ITS BOARD OF DIRECTORS. PROVIDERS OPERATING TEN OR MORE COMMUNITIES IN THE STATE OF CALIFORNIA SHALL HAVE AT LEAST FIVE RESIDENTS ON THE PROVIDER BOARD OF DIRECTORS.

THE RESIDENT MEMBERS OF THE BOARD OF DIRECTORS SHALL BE NOMINATED BY THE RESIDENT ASSOCIATIONS AND ELECTED BY THE BOARD OF DIRECTORS IN THEIR CUSTOMARY WAY. THEY SHALL SERVE FOR A TERM AS PROVIDED IN THE BYLAWS OF THE NONPROFIT CORPORATION, AND SHALL HAVE THE SAME VOTING RIGHTS AS OTHER MEMBERS OF THE BOARD OF DIRECTORS

Note to Legislative Counsel:

Attached is draft language that is proposed as a replacement to the current AB 1255. Please prepare amendments to AB 1255, as amended June 26, 1997, which deletes the contents of the bill and replaces it with the attached. If you have any questions, please call Marc Brown at 916-446-7904 ext 12. Thank you.

Proposed Amendments to AB 1255 (Davis)

DRAFT, May 12, 1998

SECTION 1: Section 1771.9 is added to the Health and Safety Code, to read:

1771.9 (a) The Legislature finds and declares that 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. 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. Continuing care retirement communities are strengthened when residents know that their views are heard and respected. The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, encouraging residents to form a resident council, assisting the residents, resident council and resident association to keep informed about the operation of the community, encouraging residents of a community or their elected representatives to select residents to participate as board members of the provider, and quickly and fairly resolving any dispute, claim or grievance arising between a resident and the community.

(b) The governing body of a provider, or the designated representative of the provider, shall hold at a minimum, semi-annual meetings with the residents of the continuing care retirement community, or a committee of residents, for the purpose of free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the community, as well as a discussion of proposed changes in policies, programs, and services. Nothing in this section precludes a provider from taking action or making a decision at any time, without regard to such meetings.

(c) At least 30 days prior to the implementation of any increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents will be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of increase and the data used for calculating the increase. This meeting may coincide with the semi-annual meetings provided for in subdivision (b) of this section.

(d) Residents shall be provided at least 14 days' advance notice of each meeting provided for in subdivisions (b) and (c) of this section. The meeting notice and agenda for the meeting shall be posted in a conspicuous place at the community at least 14 days prior to the meeting. The agenda and accompanying materials shall be available to residents of the community upon request.

(e) The governing body of a provider that is not part of a multi-facility organization with more than one continuing care retirement community in the state shall accept at least one resident of the continuing care retirement community it operates to participate as a non-voting resident representative to the provider's governing body. In a multi-facility organization having more than one continuing care retirement community in the state, the governing body of the multi-facility organization shall elect to have at least one non-voting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or shall elect 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 non-voting resident representative to the provider's governing body for every three California-based continuing care retirement communities or fraction thereof that the provider operates.

(f) (1) In order to encourage innovative and alternative models of resident involvement, a resident selected pursuant to subdivision (e) of this section to participate as a resident representative to the provider's governing body may, at the option of the resident council or association, be selected in any of the following ways:

(A) by a majority vote of the resident council or resident association of a provider or by a majority vote of a resident-elected committee of residents of a multi-facility organization;

(B) if no resident council or resident association exists, any resident may organize a meeting of the majority of the residents of the community to select or nominate residents to represent them before the governing body; or

(C) any other method designated by the residential council or resident association.

(2) The residents' council, association or organizing resident, or in the case of a multi-facility organization, the resident-elected committee of residents, shall give residents of the community at least 30 days advance notice of the meeting to select a resident representative and shall post the notice in a conspicuous place at the community.

(g) Except as provided in subdivision (h), the resident representative shall receive the same notice of board meetings, board packets, minutes and other materials as members and shall be permitted to attend, speak and participate in all meetings of the board.

(h) Notwithstanding the provisions of subdivision (g), the governing body may exclude resident representatives from its executive sessions and from receiving board materials to be discussed during executive session, however, resident representatives shall be included in executive sessions and shall receive all board materials to be discussed during executive sessions related to discussion of annual budgets, increases in monthly care fees, indebtedness and expansion of new and existing facilities.

(i) The provider shall pay all reasonable travel costs for the resident representative.

(j) The provider shall disclose in writing the extent of resident involvement with the board to prospective residents.

(k) Nothing in this section shall prohibit a provider from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings or more resident representatives to the board than required or by having one or more residents on the provider's governing body who are selected with active involvement of residents.

(l) On or before January 1, 2001, the California Continuing Care Contracts Committee shall evaluate and report to the Legislature on the implementation of this section.

Section 173.13

OKO

General Assembly: 117

Bill Number: Sub. House Bill 253

Effective Date: 10/20/87

(A) As used in this section:

(1) "Continuing care" means the provision under a written agreement of board, lodging, medical services, nursing, and other health-related services to a person sixty years of age or older, unrelated by consanguinity or affinity to the provider, for the life of the person or for a period in excess of one year in return for the payment of an entrance fee or of periodic charges.

(2) "Entrance fee" means an initial or deferred payment of a sum of money or other property made or promised to be made by or on behalf of a person entering into a written agreement with a facility for the provision of continuing care services in consideration for acceptance of the person as a resident in the facility.

(B) The residents of a facility that provides continuing care may determine annually whether they wish to elect a resident of the facility to serve on the board of directors, board of trustees, or other board that operates the facility. Election of a resident to serve on the board shall be by a simple majority vote of all residents attending a meeting called to determine if residents of the facility wish to have representation on the board. The individual organizing the meeting shall give residents at least seven days' notice of the meeting. A board to which a resident is elected under this section shall accept the resident as a nonvoting member and give him notice of and permit him to attend all meetings of the board.

(C) Every facility that provides continuing care shall, upon request, provide its residents and prospective residents with copies of any of its audited annual financial reports.

(D) Residents of facilities that provide continuing care shall have the right of self-organization.

(E) Each board of directors, board of trustees, or other board that operates a facility that provides continuing care, or a committee of the board, shall hold meetings at least quarterly with the residents of the facility, or with a committee of the residents, for the purpose of discussing facility income, expenditures, and financial matters and proposed changes in facility policies, programs, and services. The board shall give residents or the committee of residents at least seven days' notice of each such meeting.

(F) A resident of a facility that provides continuing care may bring a civil action to enforce any of the rights granted under this section.